

EXHIBIT B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA -- RICHMOND

4 GREGORY THOMAS BERRY,)
5 et al.,)
6 Plaintiffs,) Civil Case Number:
7 ~vs.~) 3:11-CV-00754-JRS
8 LEXIS NEXIS RISK &)
9 INFORMATION ANALYTICS)
10 GROUP, INC.,)
11 et al.,)
12 Defendants.)

PROCEEDINGS HEARD BEFORE

THE HONORABLE MAGISTRATE JUDGE M. HANNAH LAUCK

Richmond, Virginia

Monday, January 14, 2013

2 : 00 p . m .

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1 P R O C E E D I N G S

2 (Proceedings began at 2:17 p.m.)

3 THE LAW CLERK: All rise.

4 The Honorable United States Magistrate

5 Judge M. Hannah Lauck presiding.

6 Court is now in session.

7 Please be seated and come to order.

8 THE CLERK: Civil Action 3:11-cv-00754.

9 Gregory Thomas Berry, et al., versus
10 LexisNexis, et. al.11 Mr. Leonard Bennett, Mr. James Francis and
12 Mr. Michael Caddell represent the plaintiffs.13 Mr. David Anthony, Mr. James McCabe and
14 Mr. Ronald Raether, Jr., represent the defendants.

15 Is counsel ready to proceed?

16 MR. BENNETT: (Inaudible portion.)

17 THE COURT: All right. Thank you.

18 We're ready to proceed.

19 I understand that you all have presentations
20 to make. How did you anticipate this going forward?21 MR. BENNETT: Your Honor, first I would like
22 to introduce my co-counsel, Mr. Caddell, a UVA graduate,
23 Your Honor. He's from Houston, Texas, the firm of
24 Caddell and Chapman, a national superstar generally in
25 class litigation and FCRA. He's been at the lead in a

1 lot of this. My co-counsel, Jim Francis from the
2 Philadelphia firm Francis and Mailman. He does what we
3 do up in the Eastern District of Pennsylvania. You're
4 familiar with the other class of characters, Judge, of
5 course, Mr. Erausquin, Mr. Pittman and Ms. Rotkis.

6 Mr. Caddell will offer our presentation,
7 which we've now provided in paper copy to Your Honor as
8 well. And then my understanding is the defendant has
9 its agenda.

10 MR. ANTHONY: Your Honor, David Anthony,
11 obviously, here for Troutman Sanders. I'm pleased to
12 introduce my co-counsel, Ron Raether, who is immediately
13 to my right, with the Faruki firm out Dayton, Ohio and
14 Cincinnati. Jim McCabe with Morrison and Foerster out
15 of San Francisco.

16 And I think the idea is that Len and I have
17 just a couple of overview comments to give to the Court,
18 and then we're going to turn the floor over, and Ron
19 will be doing -- I mean, Mr. McCabe will be doing the
20 bulk of our presentation, and then there will be some
21 parts at the end as part of the presentation that
22 Mr. Raether will be making on the point on our behalf.

23 THE COURT: All right.

24 MR. BENNETT: I won't offer a whole lot more
25 despite what Mr. Anthony says.

1 We have had on our side -- on the
2 plaintiffs' side, a co-counsel agreement for a long
3 time -- long before this particular case, and it
4 evolved. Believe it or not, this is the abbreviated
5 task. And frankly, you have before you -- I'll carve
6 myself out of that -- really the top Fair Credit
7 Reporting Act class litigation in the country, and that
8 would be -- I think the defense would have a tough time
9 arguing that, if they were to attempt to, and they won't
10 because we're now holding hands. But you truly do.
11 Mr. Caddell, I've worked with him going back to case,
12 the Clark class action, where we both opposed a class
13 settlement because it didn't make any substantive
14 changes in a really important Fair Credit Reporting Act
15 case. We were successful at opposing it. That's where
16 we met in 2003, and so -- but now, we're on the side
17 attempting to pitch as Mr. Caddell will explain the way
18 you're supposed to do it. And that's our objective, our
19 opinion.

20 MR. ANTHONY: Thank you, Your Honor. We've
21 been on numerous conversations with you. It's a very
22 complicated case. We could have killed you with much
23 more paperwork. We tried to give you enough to be
24 dangerous to understand the factual and legal background
25 for this case and for purposes of the settlement. We

1 don't want to take ten hours of your time to do that, so
2 we tried to put this in presentation format to kind of
3 walk you through soup to nuts of sort of where we were,
4 how we've gotten here and what the key aspects are of
5 the settlement in case the Court has any questions.
6 And, again, at this point in time, Your Honor, among
7 other things as part of the settlement, the defendants
8 have agreed to make some changes to some of their
9 programs and policies and products that are out there.
10 Before we start getting into things like that that could
11 be to a competitive advantage or disadvantage, we want
12 to make sure we weren't missing something in terms of
13 from the settlement of where we thought this was going.
14 So I think the idea is to be more than a preview and
15 less than a final signoff here, but to make sure that
16 there's nothing that jumps out at you because,
17 obviously, you know Judge Spencer and what's likely to
18 draw his attention to that. We've been going through
19 the process of documenting this from a paper standpoint,
20 and whittling down, you know, the unresolved issues to
21 make them resolved. So our goal here is sort of try to
22 lay that foundation.

23 MR. BENNETT: We think that same thing. I
24 think, at least certainly from the plaintiffs' side, we
25 see this as an opportunity to seek approval in the

1 context of Your Honor's Court and not Judge Spencer's
2 Court, but that your voice and your knowledge and
3 expertise is one that would be well-respected before
4 Judge Spencer, and so this gives us that opportunity.
5 And that's why it is full-throated in our support, in
6 our explanation and in our details.

7 I think that there will be some divides. We
8 have exchanged draft settlement papers, but we don't
9 have them yet before you. We expect that before we are
10 done in this process, and hopefully not too much longer,
11 but not tomorrow, that we would have in front of you to
12 add to your dead-tree collection the actually settlement
13 agreement that the parties finally agree to. But it's
14 deep into that process. It's not just beginning. But
15 it's not going to be here tomorrow.

16 THE COURT: Thank you.

17 MR. ANTHONY: The last comment that I want
18 to make, Judge, I know lawyers always have a hard time
19 staying on time and giving a lot of materials. If
20 there's something that we're covering that your sort of
21 feel like, Hey, I've got that, you all can kind of blow
22 through this, just let us know, and perhaps we can scoot
23 through that more quickly.

24 THE COURT: All right.

25 MR. ANTHONY: Thank you.

1 THE COURT: Let me ask you this, I know you
2 said that there were some divides. Are there issues
3 that you think you need to highlight for me that are
4 disagreements. As I hear what it is that you have to
5 say, I have to say, not much of what you submitted felt
6 terribly divisive. Initially, in a couple of phone
7 conferences, this might have been an opportunity for me
8 to get feedback about where things might be going in one
9 direction or another. But as I read through things, I
10 don't see --

11 MR. BENNETT: Judge, we think we're -- both
12 sides have a complete understanding of the settlement.
13 We both have a shared agreement as to the deal that
14 we've agreed. Nevertheless, I'm certain everybody here
15 would expect that we would continue to have to negotiate
16 from this day until the day that we have the negotiate
17 with the FedEx, a copy of the dismissal order or if they
18 send it by mail. Not because they're more -- they're
19 obstinate in any way -- which they are, by the way --
20 but not because they're -- the defendant is intending
21 any difficulty, but because it's the nature of the way
22 that we do things. And so by my suggestion that there
23 may be some divides that remain, the major structural
24 divides, I think that we are resolved, and we're asking
25 the Court's opinion of those.

1 THE COURT: Yes.

2 MR. BENNETT: We think -- we are essentially
3 asking the Court to approve them. But those are
4 completed. We still have to draft a notice, and it
5 might be that we want to use a particular font on the
6 notice because we think this is more understandable, and
7 the class members' reaction would be more informed, and
8 the defendant might disagree. And that might be the
9 type of -- I'm sure that you would love those kinds of
10 calls on a Friday afternoon -- but those might be the
11 kinds of differences that may occur. They may not
12 occur.

13 THE COURT: Right. Okay. You're not
14 talking major structural things, though?

15 MR. ANTHONY: Again, in sitting here today,
16 I don't think we're going to give you a laundry list of
17 things that are items for us to click through.

18 THE COURT: All right.

19 MR. ANTHONY: We're not aware of any that
20 really jump at us right now that we need your
21 assistance.

22 THE COURT: All right. Okay.

23 MR. BENNETT: One of the advantages --

24 THE COURT: This is a postlogue to the
25 prologue.

1 MR. ANTHONY: It is.

2 MR. BENNETT: We have not yet been ex parte
3 with Your Honor in this instance, and that -- we don't
4 know whether that may matter at some point, but it might
5 matter. And so when we talk about differences, I mean,
6 I think that -- our side thinks that the
7 we're both present method of discussing this with
8 Your Honor remains the appropriate way. And so we would
9 continue to pursue that --

10 THE COURT: I see. All right.

11 MR. BENNETT: -- in the future.

12 THE COURT: Got it. Okay.

13 So you shouldn't be calling me for afternoon
14 chats?

15 MR. BENNETT: Yes, Your Honor.

16 THE COURT: I haven't had to yet, so --

17

18 PRESENTATION BY COUNSEL FOR THE PLAINTIFFS:

19 MR. CADDELL: Your Honor, Mike Caddell.
20 Thank you for having us this afternoon.

21 As Len mentioned, together and separately,
22 Len and I have participated in as lead or co-lead in one
23 way or another four or five of the largest Fair Credit
24 Reporting Act recoveries in history. And so it's an
25 area that I know a little bit about, enough to be

1 dangerous. Len, with his uncharacteristic modesty,
2 knows a lot about it. And so I think it's fair to say
3 that we have -- and I tell you that really by way of
4 context for the next statement, which is that this is a
5 settlement that we feel structurally -- and while there
6 are some details that have to be ironed out and we may
7 need the Court's assistance. The reason we're here
8 today is -- one of those big reasons is that if there's
9 something is glaringly wrong to the Court, and we need
10 to know before LexisNexis takes the next step and makes
11 some of these business practice changes.

12 But having said that, the agreement that we
13 have we feel excited about. It is a sea change in the
14 way LexisNexis does business, and when we say a sea
15 change in the way LexisNexis does business, you have to
16 appreciate that the LexisNexis information package that
17 they sell that we're now going to be calling collections
18 decisions or collectioning decisions is the leading
19 report on individuals, individual's assets, other
20 information in the country. And literally -- and you
21 may have seen this or picked up on this, but in the last
22 few years, they have sold over 100,000,000 of these
23 reports in the period covered by the class period. So
24 when we talk about a sea change in the way that
25 LexisNexis is doing things, we're also talking about

1 what has the potential to be a sea change in the way
2 that the industry as a whole operates in this area, and
3 it's critical.

4 I will go through what I'm going to say
5 fairly quickly because I really want to get to -- and
6 Mr. McCabe will be talking and giving you the LexisNexis
7 perspective on the litigation as a whole, and I think
8 that's important for the Court to understand why we're
9 making certain decisions that we're making. I mean,
10 some of this is a compromise. No question about it.
11 From where -- if you simply read our complaint, you
12 would look at what we're proposing to the Court, and
13 you'd say, Well, you're giving up this or you're giving
14 up that, and we are. We feel really good. We feel like
15 we got the critical issue resolved in this case, and we
16 feel like we got what's the greatest good for the class.
17 But I think it's important for the Court to hear
18 LexisNexis' perspective on this as well so the Court can
19 understand and have context for the compromises we did
20 make. But then I think I'd like for us to get beyond
21 both of those really to Mr. Raether's presentation, who
22 will tell the Court, and because of the business
23 sensitivity of it, it's not in any of the papers.
24 There's sort of allusions to it in some of the
25 paperwork, but he'll walk you through the actual changes

1 that LexisNexis will be making in its Accurint product,
2 and I think then the Court will really understand how
3 significant this is. So let me just go through this.

4 Judge, I think you've read the material.

5 Your reputation and experience (Inaudible portion.)

6 I do think it's worth pointing out -- I'm
7 sure the Court has picked up, that perhaps proposing two
8 settlements, a (b) (2) and a (b) (3). The (b) (2) is
9 purely injunctive relief. The (b) (3) is, of course,
10 monetary relief for the individuals. And I will talk
11 about why for both of those in a few minutes.

12 All through the case, there's an interesting
13 point. We view this -- and we had a conversation with
14 the counsel for LexisNexis just before we came into the
15 courtroom, and I don't think they disagree with this.
16 We view this, what we're doing today as the culmination
17 of a five-year process. We had the Williams case in
18 front of Judge Payne. The Williams case involved
19 another LexisNexis product that was admittedly subject
20 to the Fair Credit Reporting Act, the Securant credit
21 reports, and they were background reports. And in that
22 case, there was an issue about providing timely notice
23 to affected individuals that action was being taken in
24 response to or as a result of the report issued by
25 LexisNexis. The case was ultimately settled. In the

1 course of discovery on that case, we appreciated that
2 LexisNexis had a process by which it collected
3 information a single time, and then split that
4 information into two separate databases. And the Court
5 may have appreciated -- and this is a compromise that we
6 proposed -- we have taken the position in our papers
7 that if you collected and even if some of that
8 information is intended for an admitted Fair Credit
9 Reporting Act purpose, then all of the information is
10 subject to the Fair Credit Reporting Act. For purposes
11 of this lawsuit -- and I don't want there to be any
12 misunderstanding about that -- and for purposes of this
13 settlement, we have agreed that LexisNexis as a
14 compromise can continue the practice of collection once,
15 used twice, and continue to separate it into their two
16 separate databases.

17 THE COURT: The two databases that you
18 placed in front me are different databases other than
19 the two that are described for --

20 MR. CADDELL: There's a different database
21 out there that LexisNexis uses for other products that
22 have unquestionably been subject to the Fair Credit
23 Reporting Act.

24 THE COURT: Okay.

25 MR. CADDELL: So what's in front of you is

1 derived from the same original source, the original
2 collection, but was maintained as a separate database.
3 The Accurint database is what we would call that.

4 THE COURT: Yes.

5 MR. CADDELL: And so in the course of the
6 Williams case, we appreciated that that was being done.
7 We had some brief conversations with LexisNexis about
8 it, and we felt then that that was an issue that needed
9 to addressed. It was not appropriate to do so in the
10 context of the Williams case. We were far along in the
11 Williams case. The Williams case was actually -- and
12 the Court may know -- excuse me, Your Honor. It was
13 certified, and, in fact, there was a 23(f) Appeal denied
14 by the Fourth Circuit, and then the case was settled.
15 So it wasn't appropriate to address it then.

16 Not long after the Williams case was -- the
17 settlement was finalized and the case was dismissed,
18 there was a case filed in Philadelphia by Mr. Francis
19 and his firm called the Adams case, Tony Adams, and it
20 raised the issue of whether the Accurint collections
21 report, a comprehensive report which was sold to debt
22 collectors was, in fact, subject to the Fair Credit
23 Reporting Act. And we could talk a little bit about
24 that history. Shortly after that, Mr. Bennett and I
25 filed the Graham case here in the Eastern District of

1 Virginia. It was assigned initially to Judge Wilson --

2 THE COURT: Williams.

3 MR. CADDELL: -- Williams. Sorry.

4 Judge Williams, and then was transferred to
5 Judge Spencer. That case was ultimately dismissed. We
6 asked that the case be dismissed. We actually had
7 some -- we had a discussion, a mediation effort with
8 Judge Donnell. We concluded in the course of that case
9 that we didn't have the right class representatives. So
10 the case was dismissed with prejudice as to the two
11 individuals who were plaintiffs in the Williams case,
12 but we had conversations. And so -- and you'll see we
13 had conversations with LexisNexis about Accurint
14 commencing before the end of the Williams case, then in
15 the context of the Adams and the Graham cases and
16 continuing until the Berry case. So in that respect, it
17 isn't unusual. This is an unusual settlement.

18 THE COURT: Yes.

19 MR. CADDELL: It's an unusual settlement in
20 that we have been working on this for some five years
21 through the vehicle of two earlier cases that were
22 dismissed, the Adams case because it appeared that it
23 was premature perhaps from a willfulness standpoint, and
24 I'll talk about that in a minute. The Graham case was
25 dismissed. We dismissed it voluntarily, although there

1 was a motion to dismiss pending. But we dismissed it
2 voluntarily because we were convinced after our
3 conversations with LexisNexis that we did not have class
4 representatives that were the subject of -- or we
5 couldn't prove that they were the subject of
6 comprehensive reports. And so --

7 THE COURT: These are through the Graham and
8 the other plaintiff were the subject of comprehensive
9 reports?

10 MR. CADDELL: Yes. Yes.

11 THE COURT: Okay.

12 MR. CADDELL: So they're -- in a broad
13 manner, Your Honor, let me sort of lump -- and it's a
14 little unfair to do this, but I think in a big-picture
15 perspective, this is fairly accurate.

16 The comprehensive report that LexisNexis
17 produces and is sold -- the majority of which is sold to
18 debt collectors is very detailed, has not only
19 information about names, Social Security numbers,
20 telephone numbers, home addresses and things of that
21 nature, but also has bankruptcy information, auto
22 information, watercraft information. It even has
23 information about a neighborhood in which a house is
24 located or in which the individual lives. So it tells
25 you what the median income is in the neighborhood. It

1 tells you what the median value of a house is in that
2 neighborhood. It tells you what the median level of
3 education is in that neighborhood. So there's a lot of
4 information in the comprehensive report that, in our
5 opinion, went far beyond a mere sort of
6 search-and-locate, you know, sort of an address location
7 service. And then there is at the other of the
8 spectrum, there is the simple search-and-locate or
9 skip-and-locate report, which simply has name, address,
10 telephone numbers, the Social Security number, that kind
11 of information. There is a debate, and I think that the
12 case law is pretty clear. There are a few outliers, I
13 guess, that you could point to, but in general, there is
14 a pretty good consensus that if you're simply providing
15 location information, then you are not subject to the
16 Fair Credit Reporting Act. It's when you provide these
17 other what are called the seven characteristic
18 information, creditworthiness, credit standing, credit
19 capacity, character, reputation, things of that nature,
20 mode of living, that you then move into areas that are
21 covered by the Fair Credit Reporting Act.

22 So what happened in Graham was we concluded
23 that our class representatives did not have the
24 requisite reports issued on them to have the standing
25 necessary to bring the case on behalf of the entire

1 class. And so in the context of Graham, we agreed to --
2 we actually settled with a couple of LexisNexis'
3 co-defendants, who were not CRAs, but were, in fact,
4 debt collectors. We settled for them for fairly modest
5 amounts, but the individuals and those claims were
6 dismissed. At the same time we had communications with
7 LexisNexis where we advised them that we were not going
8 away, that we were continuing to pursue this, that this
9 was something that we felt strongly about, and that when
10 we found class representatives with the proper standing
11 and had the reports issued on them, that we would file
12 suit again, and that's what we did in the Berry case.

13 THE COURT: All right.

14 MR. CADDELL: That's how got to where we
15 are.

16 THE COURT: I'm going to raise this
17 question, and you can answer it sort in whatever context
18 best fits the presentation that you already have ready.

19 It would help me to hear orally why you
20 think these folks are the appropriate class
21 representatives, what is different about them from the
22 other folks. Obviously, they're not the same as
23 Ms. Adams, right, who was the victim of identity theft?
24 These are not those types of plaintiffs; is that right?

25 MR. CADDELL: Actually, I think a couple of

1 them are.

2 THE COURT: Are they?

3 MR. BENNETT: You --

4 MR. CADDELL: Well, they're all subject to
5 comprehensive reports.

6 THE COURT: Right.

7 MR. CADDELL: That's the key. That's the
8 key.

9 THE COURT: But let me put that in a
10 different context, also, which is at some point I
11 presume you're going to address to me not just why
12 they're appropriate class representatives, but sort of
13 in the context of sort of the typicality and commonality
14 requirements because you all, I think, are rightfully
15 saying that one of your risks is whether or not the
16 class can be certified for whatever reason, and I know
17 this is a different context than the Fourth Circuit
18 decision in Judge Payne's case, The Soutter case where
19 there was a challenge as to the class, but obviously,
20 that is something that you all could face if you weren't
21 reaching an agreement in the meantime. And so I feel
22 certain that any judge looking at this would want to
23 know why you would survive sort of a Soutter analysis or
24 why these folks meet the requirements as class
25 representatives themselves.

1 MR. BENNETT: By the way, those are my
2 cases, Your Honor. So at the appropriate time, I will
3 be happy to --

4 THE COURT: Right. I'm just laying that all
5 out there that that is just clearly something that I
6 think any judge looking at this, even though you've
7 agreed, would want to be sure that they're looking
8 behind the agreement that you've reached.

9 MR. BENNETT: Certainly, Your Honor.

10 MR. CADDELL: Let me just go through a
11 couple of these other items very quickly. The extent of
12 discovery -- the discovery -- there was discovery taken
13 in the Graham case, there was discovery taken in the
14 current case, we've looked at documents. We've worked
15 with experts. I want to be careful. There's some
16 discovery that was taken in the Williams case and in the
17 Adams case and in Graham that was either returned or
18 destroyed as a result of a settlement reached in
19 Williams and the settlement reached in Adams. I don't
20 know that in Graham we had any.

21 (Conferring with co-counsel off the record.)

22 MR. CADDELL: I don't think so. But
23 obviously, that information informed our decision making
24 in structuring Berry and where we are going in Berry.
25 The experience of counsel, the Court has already heard,

1 I think, enough of that.

2 THE COURT: I don't think that's your issue.

3 MR. CADDELL: Yes, Sir -- yes, Ma'am.

4 THE COURT: But let me be clear that what
5 you're saying with respect to discovery, the way that I
6 read your filings, which makes perfect sense to me, is
7 that this is sort a latter case in a continuum, and even
8 though you may not be using actual documents from
9 previous cases, that they have formed your litigation
10 strategy on both sides in a manner that we have to take
11 that into account as far as sort of what has already
12 been undertaken in your case, whether or not you've had
13 extensive discovery in this particular case. Is that a
14 fair restatement?

15 MR. CADDELL: Correct. Yes, Your Honor.

16 I've already handled this -- the procedural
17 history in Berry, and we talked about the overview. The
18 Adams case was filed back in September of 2008. Again,
19 there were depositions taken in the Adams case. The key
20 element from our standpoint in the Adams case -- or the
21 key development in the Adams case was that LexisNexis
22 argued in a motion to dismiss that its Accurint report
23 was not or could not be construed as a consumer report
24 subject to the FCRA. And the Court in an opinion,
25 granted in part, denied in part, but as to the consumer

1 report issue, the Court determined at least at the
2 motion to dismiss stage that the Court could not
3 conclude that the Accurint report was, in fact, not a
4 consumer report. And that's the key from our standpoint
5 because we think that in the context of these cases, one
6 of the big issues, of course, is willfulness, and
7 statutory damages are dependent upon a finding of
8 willfulness. We think that once that opinion was issued
9 by the District Court that you then have -- you can
10 point to sort of decision point where you can say --
11 again, this is the plaintiff's perspective. Obviously,
12 LexisNexis has a very different perspective. But from
13 our standpoint, we say that's when you can point to --
14 at that point, you were on notice. LexisNexis was on
15 notice that merely because you refuse to call it a
16 consumer report and merely because you have people sign
17 a little certificate that says we're not going to use
18 this for a permissible purpose under the FCRA, that
19 doesn't get you there. That's not -- that doesn't solve
20 the problem. If you've got that kind of information in
21 your reports, then we think anyone reasonable would
22 understand that that report is going to be used for
23 purposes encompassed by the Fair Credit Reporting Act.
24 So we think that was sort of a watershed moment, and
25 from that point forward, we felt that the risk for

1 LexisNexis of a willfulness finding was significantly
2 increased. I think that they would agree that it was
3 increased perhaps, but they would say it moved the
4 needle from zero to maybe one percent.

5 Okay, well, Mr. McCabe is not quite willing
6 to concede to one percent.

7 THE COURT: Maybe he was saying it was 83
8 percent. He was silent.

9 MR. CADDELL: Again, we could talk a little
10 bit about Graham, but I don't think we need to belabor
11 that. There were a couple of depositions taken in the
12 Graham case, which confirmed, again, the sort of collect
13 once, used twice.

14 MR. BENNETT: Your Honor, at this point --

15 THE COURT: I don't really care about formal
16 presentations, by the way. I mean, we're in a
17 settlement context. Actually, if this is easier -- I'm
18 not being impervious, I meant to tell you. I'm happy
19 for you to sit and do this. I don't know how you set up
20 your computers, but I'm happy -- we're doing this
21 relatively formally, but I'd rather the conversation
22 flow in a manner that makes it easier for you all and
23 for me. I should have said that right off the bat.

24 (Discussion off the record.)

25 MR. BENNETT: The one thing that I would

1 point out to support and cheer on of Mr. Caddell's
2 argument, at Page 5 of our memo, you actually have the
3 date chronology --

4 THE COURT: Right.

5 MR. BENNETT: Right.

6 And the point is not simply these general
7 claims of, you know, the defendant knew that we were
8 continuing to proceed after Graham. We actually had had
9 a discussion. If you look at the dates, you would know.
10 You can see this. On January 21st, Graham was
11 dismissed. On the 19th, this was two days after our big
12 meeting in New York with all of the LexisNexis
13 management and all of the attorneys crammed into an
14 otherwise large conference room. And then prior to --
15 in December of 2010, on the other side of the holidays
16 when we had all flown up to meet Mr. McCabe, without
17 stepping outside of what Mr. McCabe may or may not want
18 us to share, I can say that we actually exchanged
19 detailed injunctive relief proposals. It wasn't simply
20 work on that. It was here are all of the changes we
21 need made. For example, your question about the
22 totality, Mr. Graham couldn't have represented the class
23 as a pitch for those injunctive relief changes. The
24 changes that we were making were not in the package, or
25 at least in part. And so if you look at that timetable,

1 you'll see that this wasn't simply a matter of -- well,
2 they knew we weren't giving up, but it was -- I don't
3 want to say orchestrated, but it was a disciplined,
4 deliberate, not retreat, but the final step towards
5 where we are today for the plaintiffs' side. There is
6 no way you can -- I mean, I'm representing that to you
7 the letters and responses to the parties would so reveal
8 that those dates, I think, are a good point.

9 THE COURT: All right. Okay.

10 MR. CADDELL: Your Honor, I think the next
11 slide we're talking about the Graham case. Again,
12 LexisNexis filed a motion to dismiss, and I think -- and
13 we did dismiss the claims because we could not determine
14 which reports were sold with respect to our class
15 representatives in the Graham case, and it appeared
16 that -- and this was based in part on representations
17 made by counsel for LexisNexis, and I accept those at
18 face value. I do today. I mean, I believe they were
19 accurate, that they were not comprehensive reports. And
20 so that is -- and I'm not blaming. I don't mean this to
21 sound pejorative, but that is the pernicious nature of
22 this problem. When you don't -- when you treat a report
23 as not being subject to the Fair Credit Reporting Act,
24 the subject of the report typically never knows that the
25 report has been issued. That's the problem. And these

1 cases become very difficult to bring or pursue because
2 often there are victims who are unwitting victims,
3 unknowing victims. And the defendant appropriately so,
4 I'm not -- there's nothing wrong about this. This is
5 the way the statute is set up, and if the defendant is
6 successful in eliminating a class representative, then
7 they know that it's very difficult. We can't just go
8 out and advertise. And the problem is even if you
9 could, the people don't know that they've been harmed,
10 that they were the subject of a report. So if you don't
11 know that, then you don't know that you have rights or
12 claims that you might be able to make. And so we, in
13 fact, then dismissed the Graham case as a result of
14 that.

15 We ultimately were able to identify
16 individuals that had comprehensive reports issued about
17 them. They were the subject of debt collection efforts,
18 and I'll just share this with the Court. They were the
19 subject of debt collection efforts where the debt
20 collectors had acquired a comprehensive report from
21 LexisNexis, an Accurint report. So they were precisely
22 the people who we believe have been harmed by this
23 practice, by this structure. And LexisNexis, again,
24 their argument would be what are we to do, we sell this
25 only to people who are willing to certify that they will

1 not use these reports for evaluation of who should be
2 pursued for debt collection. We sell these reports to
3 people who simply say, Oh, we're just trying to locate
4 somebody.

5 The problem is, and from our standpoint --
6 again, the plaintiffs' standpoint, we think that the
7 problem with the LexisNexis position is if you look at
8 the report itself -- there are various kinds of reports.
9 There's the Accurint background report, which offers a
10 variety of searches and reports, the search decipherer
11 report, then you've got person search, and then you've
12 got the comprehensive report. And this is sort of the
13 gateway into the -- or it's on the LexisNexis website,
14 but I think this illustrates best, Your Honor, and you
15 can see at the bottom, and I think -- it doesn't show up
16 there. You can see in the middle of the page where it
17 says, Address Summary --

18 THE COURT: Yes.

19 MR. CADDELL: And right underneath of that,
20 you see where it says, Average Age, 45; median household
21 income, \$136,658; median home value, \$416,200; average
22 years of education. It's that kind of information on a
23 comprehensive report that in our mind clearly
24 differentiates this report from something that someone
25 wants to use to simply locate someone. When you have

1 that kind of information on a report, and you're willing
2 to pay a little more to get it, then we think and our
3 argument has been that you're using that report almost
4 by definition, you're using that report for an
5 evaluation -- effectively, a credit evaluation. Who am
6 I going to pursue? And if I've got somebody who has
7 that information versus someone who has information that
8 says the median household income is \$10,000, and the
9 median home value is \$25,000, and the average years of
10 education is five, I'm definitely going to go after this
11 guy who's living in the better place and neighborhood,
12 got more money, appears to be -- even if he has
13 temporary financial distress, given these indicia, is
14 likely to have money in the future. So we think it's
15 the inclusion of that, again, the seven characteristic
16 information. We think that's what converts the
17 comprehensive report from simply a locator report to a
18 credit report.

19 THE COURT: I know that you're proposing two
20 separate types of reports as part of your settlement --

21 MR. CADDELL: Yes, Your Honor.

22 THE COURT: -- the contact-and-locate and
23 the collections whatever --

24 MR. CADDELL: Collections
25 decisioning (sic.).

1 THE COURT: -- decisioning (sic.), but is
2 there the equivalent of that now? Is there a
3 contact-and-locate report now different from this
4 comprehensive report? I know that you've talked about
5 that there are levels of reports that you can pay for.

6 MR. CADDELL: There is a simple report
7 called person search.

8 THE COURT: Person search, which is --

9 MR. CADDELL: Yes.

10 THE COURT: -- referred to, and that would
11 just be the addresses?

12 MR. CADDELL: Well, it's a little more
13 information than that. It's more --

14 THE COURT: And Social Security number,
15 obviously.

16 MR. CADDELL: Yes, yes.

17 But it's more information than that, but it
18 does not have this kind of creditworthiness type of
19 information in it.

20 THE COURT: Right. Okay.

21 MR. CADDELL: (Inaudible portion.)

22 Mr. McCabe will talk about LexisNexis' defenses of --
23 you know, the settlement history. We first met -- and
24 if I might approach, Your Honor, I have -- it's actually
25 a little incomplete. I look at it now. It's often the

1 case when you get in the courtroom and you look at
2 something, and you see something that was missing, but
3 if I might approach your clerk.

4 THE COURT: Ms. Robertson will help you.

5 MR. CADDELL: But the timeline -- but you
6 can see, Your Honor, the first time that we met -- the
7 first settlement meeting was more than three years ago.
8 It was a meeting with Mr. Bennett and LexisNexis general
9 counsel and inhouse counsel, Nancy Nash, in Newport News
10 back in December of 2009. That was some three months or
11 so after the Graham case was filed, but I was involved
12 in that indirectly because we worked with Mr. Bennett on
13 a PowerPoint presentation that we actually modified from
14 the Williams case, and he used that in that
15 presentation. Subsequent to that, as you can see, we
16 had a meeting in Philadelphia. Between the meeting in
17 Philadelphia and -- actually, maybe before the meeting
18 in Philadelphia, there was a mediation with
19 Magistrate Donnell in this courthouse where we discussed
20 Graham and where we really discussed and grabbled with
21 the issue of did we have adequate class representatives
22 or not. We made some progress, and actually, I viewed
23 that, and that's one of the reasons why I noticed that
24 this is not on the timeline. I viewed that as a
25 critical meeting because it was at that meeting that I

1 think we really began to further refine our thinking
2 about the case. At that point, I think we were focused
3 as much as anything on the sort of collect once, use
4 twice issue that I've mentioned earlier, and we weren't
5 really being, I think, subtle enough to recognize that
6 the real issue was the sale of -- and we had it in our
7 case. So don't misunderstand me. It's not something we
8 hadn't addressed, but I think we began to differentiate
9 between different levels of goals, what we were trying
10 to achieve. And I think it was at that meeting with
11 Judge Donnell that we began to realize that what we
12 really wanted to achieve was to eliminate the sale of
13 the comprehensive reports to debt collectors, that that
14 was the problem that we really wanted to address in the
15 litigation. And so that's why I say -- and then we've
16 had -- you can see several other meetings since then.
17 Roughly a year ago, we agreed to retain a mediator. You
18 may or may not be familiar with Mr. Wulff, he is in
19 Oakland, and he is -- he was interviewed and hired to
20 mediate all of the World Trade Center claims after the
21 Twin Towers were destroyed on 9/11, and he spent three
22 years in New York mediating all of those claims
23 successfully. At the end of which, he promised his wife
24 he would never leave Oakland again. And so if you want
25 Randy Wulff to mediate your case, you have to go to

1 Oakland.

2 THE COURT: Yes.

3 MR. CADDELL: And so we did go to Oakland on
4 four different dates. We met with Mr. Wulff, mediated.
5 It probably goes without saying, but I will say the last
6 mediation sessions with Mr. Wulff is when we addressed
7 attorneys' fees. We did not address attorneys' fees
8 until we had a framework in place for both the
9 injunctive relief and for the monetary relief and what
10 we thought those would look like.

11 THE COURT: Yes.

12 Let me just say by way of feedback, and then
13 you all, especially LexisNexis, can address this.

14 As I read through this information, the
15 nature of differentiating between different reports as
16 comprehensive reports, it does strike me as sort of
17 having the benefit of commonsense that you don't need
18 all of that information to locate somebody. So I have
19 read through the briefings that you've had in the Adams
20 case, and I've read through the position paper that you
21 present here. I understand that that is your position.
22 I think as you look at these reports, it does lean too
23 quickly to a sense of if you're just trying to locate
24 someone, why do you need to know median incomes or
25 bankruptcies or fishing licenses or whatever else that's

1 available through the report.

2 So to the extent that you're looking for
3 feedback, I think that makes commonsense. It's always a
4 benefit to make commonsense.

5 MR. CADDELL: Thank you, Your Honor.

6 Your Honor, we allege classes in the Berry
7 case really that fall into two categories. The broad
8 categories, the one -- while we allege three classes,
9 effectively, they're in two categories. One is everyone
10 who has been the subject of an Accurint report sold to
11 nongovernmental entities. Reports sold to governmental
12 entities, we've agreed, again, as a compromise. We will
13 not -- we're not addressing those reports as part of the
14 settlement. There are valuable uses made of Accurint
15 reports by law enforcement and other parts of the
16 government, and so we're -- this is -- we're not
17 touching that in any way. We're not seeking to change
18 any of LexisNexis' practices with respect to reports
19 sold to governmental entities.

20 But as to all other subjects then, we do
21 have a -- and that's the subject of the injunctive
22 relief and the way in which they have agreed to modify
23 and change their business practices.

24 The second broad category is anyone who --
25 and I lump these together a bit, and I'll explain why.

1 All consumers who requested a copy of their Accurint
2 file and all consumers who contacted LexisNexis to
3 dispute information in their Accurint file. Now, again,
4 you have to appreciate that no one is given notice that
5 they are the subject of an Accurint report. No one is
6 given notice of the fact that they are, in fact, the
7 subject of an Accurint file, that Accurint has
8 maintained all of this information. If you were not
9 aware of that kind of thing, there's no notice that
10 would be given to you. There would be no reason for you
11 to know. So typically, it has been our contention and
12 our belief, and that forms the reason for the monetary
13 relief class, it's been our contention that while
14 there's not perfect correlation, there is a rough
15 correlation with people who have been pursued by debt
16 collectors as a result of a comprehensive report, or who
17 have had a mixed file issue and that that has been
18 brought to their attention, that those are the people
19 who would then take the next step and contact LexisNexis
20 and either request a copy of their Accurint report or
21 dispute -- attempt to dispute some of the information
22 contained in their Accurint report. And, of course, one
23 of the things that we are very happy about with the
24 proposed settlement is that there will be a way -- a
25 manner in which consumers can, in fact, dispute content

1 in their comprehensive -- the collections report.
2 They'll actually be able to dispute that, and that
3 will -- and if it's inaccurate, it will be corrected.
4 Even as to sort of what's now a person search and what
5 will become search-and-locate or the more prosaic
6 report, in that report, even then the consumer in the
7 proposed settlement will be able to include up to
8 100-word statement in the file, the Accurint file to
9 those reports not required by the Fair Credit Reporting
10 Act. This is something we were able negotiate as part
11 of the overall settlement that if they dispute some
12 portion of or the accuracy of their person search
13 file -- what's now a person search, and that will
14 actually be in their file as well.

15 So that's why we have this sort of two broad
16 categories. There's really no way for LexisNexis to
17 identify people who have suffered adverse effects as a
18 result of the issuance of the comprehensive reports, and
19 so the proxy is we felt that the people who contacted
20 LexisNexis either to request the report or to dispute it
21 would be the most likely individuals to fit that
22 category.

23 THE COURT: And that's approximately, is it
24 31 thousand --

25 MR. CADDELL: Yes.

1 THE COURT: Whatever it is.

2 MR. CADDELL: Yes, Your Honor.

3 The FCRA, as we've talked about the seven
4 factors, it's creditworthiness, credit capacity, credit
5 standing, personal reputation, mode of living,
6 characteristics, and there's one other.

7 MR. BENNETT: Capacity and creditworthiness.

8 You have capacity and worthiness --

9 MR. CADDELL: That's it.

10 And the key is -- and we, again, from our
11 perspective, the key is it's not just information which
12 is used in that manner, but which is expected to be
13 used. And we would quarrel with LexisNexis --
14 LexisNexis would say, How could we expect people to use
15 this information inappropriately when they would certify
16 to us that they were not going to use it for any Fair
17 Credit related purpose? And we think that's, again,
18 where commonsense comes into play.

19 Again, Mr. McCabe will address LexisNexis'
20 position, and, I mean they have a very -- we have great
21 respect. We've worked opposite of these lawyers for --
22 Mr. Raether, six or seven years now. Mr. Anthony, I
23 know, Mr. Bennett and Mr. Anthony have a long history,
24 mutual respect. Mr. McCabe, we've worked with for five
25 or six years now. We have great respect for these

1 lawyers. They're good lawyers. They have strong
2 positions. They articulate their positions well, and so
3 there's risks associated with moving forward, and
4 that's -- again, our goal as representatives of the
5 class is to determine what is the greatest good for the
6 class, and it's not getting at the end of the day what
7 might be \$10 a person or \$5 a person or \$1 a person, but
8 it's making the substantive change, which we cannot
9 achieve through litigation. We can't get a litigated
10 outcome where we achieve injunctive relief, and I think
11 this is the better -- it's not just the great weight of
12 the authority out there. I think it's probably the more
13 reasoned -- the better reasoned authority is that
14 private litigants are not afforded injunctive relief
15 under the Fair Credit Reporting Act. So we can't get
16 there but through a negotiated resolution, and we
17 determined sometime ago that that would be in the best
18 interests of the class.

19 We go through some of the litigation risks.
20 The Court is --

21 THE COURT: So let me be clear. You're
22 mentioning that in part because for the greater class --
23 what is it 100 million, 200 million?

24 MR. CADDELL: Yes.

25 THE COURT: That none of those individuals

1 will be getting any money?

2 MR. CADDELL: Correct, Your Honor.

3 THE COURT: Okay.

4 MR. CADDELL: That's right.

5 THE COURT: Okay.

6 MR. CADDELL: We run through the litigation
7 risks. The Court's more familiar with the litigation
8 risks, or at least as familiar with litigation risks as
9 we are. I think -- and let me say this, we're not
10 afraid to go forward in a case where it's appropriate,
11 and the Williams case, I think, demonstrated that.

12 Mr. Bennett was able to achieve a certified class, we
13 survived a 23(f) Appeal, and we were rapidly preparing
14 for trial. We settled, I want to say in January, and
15 the trial was set for April, and we had already financed
16 the notice to the class. So, I mean, we're not afraid
17 to should the circumstances warrant it. This was a
18 case, however, where we felt the better course -- once
19 we achieved the major objective of business practice
20 changes, we felt this was the better course.

21 THE COURT: Yes.

22 MR. BENNETT: When you appear before a Court
23 and you tell the truth, and you do your best over a
24 career so that, I think, it's because -- well, I can
25 represent to the Court that I have in my entire FCRA

1 career, class career, I've never met a judge -- I've
2 never had a case where injunctive relief was our almost
3 singular goal, and I've never accomplished as much.
4 Maybe the bankruptcy settlement, we changed how
5 bankruptcy was reported. This is right up there.
6 Accurint is a huge brunt of it. It's not like Coke and
7 Pepsi. It is Accurint. The way that we allege,
8 LexisNexis is actually a very good corporate citizen,
9 but we allege this product has caused often
10 unlitigatable (sic.) difficulty for the people who we
11 proceed to represent. I think that the injunctive
12 relief objective is not a footnote or asterisk. It's
13 not simply going to be a paragraph in the bottom of a
14 settlement agreement. This is a big deal. The monetary
15 relief was easy to negotiate for the dispute of the
16 class. It's certainly much easier. The injunctive
17 relief was the challenge. That's what has been the
18 longest periods of delay, why we're here in January and
19 not in October, I argue are for those reasons.

20 THE COURT: Okay.

21 MR. CADDELL: Your Honor, the litigation
22 risks for the plaintiffs, I think, are pretty obvious.
23 And the litigation risks for LexisNexis, I mean, given
24 the magnitude of the class, given the statutory
25 penalties. The defendants, I think, recognize that the

1 Courts are going to work very hard to avoid imposing
2 sort of an overwhelming sanction under a statutory
3 scheme, and I appreciate that as well. I mean,
4 LexisNexis provides a valuable service. But
5 nonetheless, the statute seems to be pretty clear, and
6 so given the number of claims that are potential,
7 there's risks for LexisNexis in going forward.

8 The proposed settlements, I think the
9 Court's familiar with this. And we will -- again, I
10 want Mr. Raether's will be a detailed report, the actual
11 injunctive relief components. The injunctive relief
12 class, the (b)(2) class is defined as all persons
13 residing in the United States, including the Territories
14 of Puerto Rico, with respect to whom there was
15 information in the Accurint database from November 14th,
16 2006 to the date when the Court enters its preliminary
17 approval order either proposing a notice, even though I
18 know the Court is aware that a (b)(2) class does not
19 require notice, we're proposing notice nonetheless.
20 There will be some published notice. There will be
21 internet notice, we'll establish a website which will
22 contain the key pleadings from the case and information
23 about the settlement and the business practices. There
24 will be an internet banner advertisements, things of
25 that nature. We estimate -- I don't know if the Court

1 has overseen a settlement involving Kathy Kinsella.
2 She's out of D. C. We've worked with Kathy on many
3 occasions involving literally tens of millions of class
4 members. She's one of the most respected notice
5 providers in the country. She has been doing this for a
6 very long time. I first worked with her in 1993. She's
7 as good as it gets. And she's designing this program
8 and estimates that 75 percent of adults 18 and older
9 will be exposed to the notice a minimum of two times.

10 The release is, I think, worthy of comment.
11 There will not be a release given to LexisNexis of
12 actual damages. So any consumer who can allege or who
13 has suffered actual damages as a result of the sale of
14 the Accurint comprehensive report to debt collectors and
15 then can prevail on a willfulness -- well, even without
16 willfulness because actual damages don't require a
17 finding of willfulness -- they can recover. And this
18 settlement will not affect their right to pursue that
19 claim in any way. It will affect their right to pursue
20 punitive damages and statutory damages. And so that's
21 what we're giving up. The use of the class device,
22 which is a procedural mechanism, and then we are
23 releasing the willful noncompliance claim in exchange
24 for the injunctive relief.

25 We have a note here, the second big bullet

1 point, what that refers to, Class contracturally agrees
2 that Accurint is not a consumer report under specific
3 limited circumstances. That's a reference to what is
4 now a person search and what will become the sort of
5 search-and-locate report. And we have an agreement that
6 that report will not contain the seven characteristic
7 information. It will be restricted to information
8 necessary to locate an individual and confirm that you
9 do have the correct information -- or the correct
10 individual. And there's clearly going to be a gray area
11 where we will be working with LexisNexis, and I think
12 both sides will be working in good faith on that to
13 flange that up and to figure out exactly what will and
14 will not go into that report.

15 I think it's important to alert the Court to
16 the fact that while there is a seven-year term to the
17 injunctive relief, there is some fluidity permitted
18 under the settlement agreement because this is an
19 evolving industry. Information, as the Court is aware,
20 is constantly changing, access to information is
21 constantly changing, and so we've built into the
22 settlement -- or anticipate building into the settlement
23 fluidity both as to business practices, and, of course,
24 anything in response to any sort of regulatory changes,
25 legislative changes. You may have noticed we have an

1 expert report. The President has launched an initiative
2 about privacy standards. Other entities out there are
3 sort of focused on this issue. So it's an evolving
4 matter. And so we have to build into the settlement
5 some fluidity. We do have some things that are, I
6 think, very clear and sort of bright lines, and then
7 there are going to be some things where LexisNexis has
8 to have flexibility to respond to the marketplace.

9 THE COURT: I'm going to ask you about this.

10 MR. CADDELL: Yes, Your Honor.

11 THE COURT: When you're talking about -- you
12 all refer to the sunset date, does this apply to both
13 classes, or this is just referring to the person and
14 search requirements or the particular add-ons with
15 respect to that?

16 MR. CADDELL: The injunctive relief.

17 THE COURT: The injunctive relief.

18 So there's no part of the agreement -- or is
19 there -- that talks about whether or not, say if
20 LexisNexis decided it wanted to spend millions of
21 dollars to revert to what it did, which it doesn't have
22 the grain of commonsense. There's no agreement about
23 what happens after seven years? Do you understand what
24 I'm saying?

25 MR. CADDELL: Yes, Your Honor, and there is

1 no agreement as to what happens after seven years.

2 THE COURT: Okay.

3 MR. CADDELL: And frankly, Judge, our
4 perspective is the same. We've done this -- I've done
5 this before in cases where we have a provision, a sunset
6 provision, and it's three years, four years or five
7 years. Understandably, defendants don't want to be
8 locked into something ad infinitum.

9 THE COURT: I'm just making sure I
10 understand it.

11 MR. CADDELL: But we also appreciate that
12 the reality is once you set that ocean liner on course,
13 it's hard to make a turn, and it generally keeps going
14 in the same direction.

15 THE COURT: Right.

16 MR. BENNETT: And, Judge, in this regard, I
17 think that first by fluidity, the discussion that we had
18 was that we were talking about the degree of detail in
19 the injunctive relief order, for example. That's one of
20 the continuing negotiations of how we pay for this, the
21 verbiage. You're going to see a very detailed
22 presentation of screen prints, the before and after.

23 THE COURT: Yes.

24 MR. BENNETT: The parties do not contemplate
25 the injunction to say that you have to maintain that

1 beautiful blue and use those fonts. I think the
2 principals that we're talking about aren't fluid. That
3 is this information to be covered. From our side, what
4 we believe we accomplish is LexisNexis agreeing that the
5 argued information, the commonsense, it looks like it
6 should be the best area governed, that will be FCRA
7 governed.

8 Candidly, if you were to answer commonsense,
9 an output that has the different versions of Leonard,
10 Leonard Anthony, Leonard A, Len, Bennett, in response to
11 a person search with my last -- with various variations
12 of my home address, you will be more likely -- we will
13 conclude and to think, commonsense tells you,
14 Mr. Bennett, that's not a FCRA product. Both sides have
15 arguments to the extreme. Mr. McCabe is the top
16 litigant in the country at parts of this, and
17 Mr. Raether represents all of the information companies.
18 And so they would push the other extreme, and then
19 Mr. Francis and I on our side.

20 That second bullet point that you see is
21 where in that gray we agreed to lay down the line. And
22 that's an issue of some sensitivity. That's an
23 important compromise in the injunction because we
24 forfeit contractually the right for the class members
25 the right to assert, so it would be an estoppel or a

1 contractual estoppel argument, the right to assert
2 absent area governance of that person search-like
3 product based on the collected once, used twice argument
4 that we were making.

5 The defendants viscerally, vehemently
6 disagrees that that once/twice argument has any teeth to
7 it, and you recognize that I'm generally passive and
8 docile in the way that I see things.

9 And so that rather than come up -- and I
10 think that really Mr. Anthony and Mr. Caddell got us to
11 a point of truce here, that we will accept that without
12 a determination by the Court as to who's right, that
13 contractually, this is going to be the demarcation point
14 going forward for the seven-year period. Without any
15 acknowledgement by either side as to who ultimately
16 might have won that battle if Judge Spencer had weighed
17 in on it. But that's the second bullet point --

18 UNKNOWN SPEAKER: (Inaudible portion.)

19 MR. BENNETT: But these people for
20 LexisNexis --

21 THE COURT: Meaning the nongovernmental
22 people? Isn't these people --what do you mean by these
23 people?

24 MR. BENNETT: Well, the injunctive relief
25 class.

1 MR. CADDELL: You're not missing anything,
2 Judge. It's everybody.

3 We agreed, as I mentioned, at the end of
4 the -- after we had agreed on and it had actually gone
5 to the point of seeing a presentation on the new
6 business practices, then we talked about attorneys'
7 fees, and we agreed on 5-and-a-half million in
8 attorneys' fees for the injunctive relief.

9 We had Neal Richards, who while he is in St.
10 Louis -- he is also a UVA graduate and well-respected.
11 He really is one of --

12 THE COURT: Let me just ask you this.

13 MR. CADDELL: Yes, Your Honor.

14 THE COURT: As to the 5-and-a-half million,
15 how did you get there?

16 MR. CADDELL: It was simply a negotiated
17 amount. It was a combination of what we thought the
18 value of the settlement was, and you'll see -- even
19 Mr. Richards says the value of the settlement is -- you
20 could call it billions of dollars. And you really could
21 because it's a volume thing. If you've got a 100
22 million of these reports issued --

23 MR. BENNETT: Your right to a free copy of
24 your consumer report every year, the implication of FCRA
25 governance of this product, for example, is

1 multifaceted. For instance, Your Honor, just to
2 (Inaudible portion.) was that LexisNexis is charging
3 consumers --

4 THE COURT: Eight dollars.

5 MR. BENNETT: -- eight dollars per copy for
6 (Inaudible portion.) an FCRA file, and the consumer is
7 entitled to a free report once a year. (Inaudible
8 portion.) So that would be one very simple linear way
9 to evaluate the potential economic relief because all of
10 those consumers that were being charged eight dollars
11 for what was otherwise free under the law. Now,
12 (Inaudible portion.) So that's in play here as well.

13 The difficulty -- well, not difficulty. In
14 the Clark class action, we faced an economics argument
15 by the lawyers that didn't even make a change. It
16 didn't even correct the method of credit reporting. In
17 that case, the credit reporting agency used your report,
18 if your spouse filed bankruptcy and the other spouse
19 didn't, it would report both of them has the trade lines
20 of bankruptcy, and the injunctive relief that we
21 objected to, and it was nothing else. There was no
22 monetary class. The injunctive relief was that they
23 would change, including the bankruptcy instead of just a
24 bankruptcy. And even then, it was still scored, nothing
25 changed. But that we faced the defendant saying -- I

1 mean, an economics expert saying that the change was
2 worth 6-point-some billion dollars in an outline. We
3 don't want to do that. We will try to monetize it to a
4 degree, but with -- in this circumstance, the value has
5 both monetary value that we can monetize, (Inaudible
6 portion.), and a real non-monetized value in the form of
7 your ability to learn what information exists about you
8 in this major database which answers your question in
9 addition to that, Judge.

10 There would be a disagreement in a fee
11 position. At the end of this, we would submit a fee
12 petition. We would want to get the time since we
13 started litigated LexisNexis through this very moment,
14 and we would want to hold the fire and we would want the
15 light. The defendant would argue that we shouldn't.
16 This money was negotiated to be paid much like any
17 conventional fee petition. The defendant would agree to
18 pay 5.5 million dollars as a reasonable attorneys' fee
19 under the (Inaudible portion.) Information of the FCRA
20 in this injunctive relief settlement. But it doesn't
21 come out of -- it isn't like the monetary relief class,
22 which was negotiated independently --

23 THE COURT: Right.

24 MR. BENNETT: -- in our room where we're
25 asking for some of the class' money as a fee

1 compensation.

2 THE COURT: It just helps me to know.

3 Often, they're tied to some percentage of something
4 else, and it helps me in the sense. The brief on this
5 does come into play eventually. It doesn't strike me as
6 an outrageously high fee. It strikes me --

7 MR. CADDELL: Let me mention one other
8 thing, Your Honor, in that context. The other issue
9 that we discussed was there is the benefit to the class.
10 As lawyers for the class, we always want to look at
11 what's for the benefit of the class. And I do think it
12 is, any way you cut, the value to the class is in the
13 hundreds-of-millions of dollars. Because this is, over
14 the next seven years, you're talking about more than
15 100,000,000 of these reports going out, and people will
16 get the benefit of the Fair Credit Reporting Act on
17 those reports.

18 Defendants often look at the cost to the
19 defendant. And there is a substantial cost. LexisNexis
20 has not precisely monetized this yet. Their estimates
21 are 3 to 4 million to implement it, and they believe it
22 may cost them from a business standpoint about
23 8 million.

24 UNKNOWN SPEAKER: Five.

25 MR. CADDELL: Five. Okay. About 5 million

1 dollars.

2 So you've got sort of at the low end of what
3 it's actually going to cost them both in implementation
4 and in marketing, in their revenue, and at the high end,
5 what the benefit will be to the class.

6 MR. FRANCIS: Yeah, I also just want to
7 point out that there's a real (Inaudible portion.)

8 Number one, they will now have to sell these
9 reports using the FCRA's standard of maximum possible
10 accuracy. So whereas before, even up until now, if
11 they're not covered by the FCRA, they don't have an
12 accuracy threshold at all. Here, in the future,
13 assuming that this Court will agree with this
14 settlement, these reports will be subject to a maximum
15 possible accuracy standard, and LexisNexis will be
16 required to observe that standard. That's a huge
17 benefit for consumers. As Your Honor alluded to earlier
18 regarding Ms. Adams' situation, you laid that out
19 because that was an example of what happened. Turns out
20 in that case, Ms. Adams was the subject of inaccurate
21 Accurint report sold to a debt collector. As a result,
22 the debt collector continued to hound her, to go after
23 her. She ended up having her wages garnished. As a
24 result, she didn't know why. It was only when we were
25 in that litigation, that we learned what the source of

1 that information was. So she was without recourse.
2 There was no FCRA covering the act covering the accuracy
3 of reporting. She was not able to bring a case against
4 LexisNexis.

5 Here, these consumers who are the subject of
6 an inaccurate LexisNexis report will now be able to
7 bring a FCRA case in the event that they sell something
8 wrong about that consumer and it causes them harm, they
9 can bring a FCRA case with the mandatory (Inaudible
10 portion). They can dispute information that is
11 incorrect. LexisNexis does not -- they can remove that
12 information, they can delete it from the report, they
13 can bring an action. So they have real teeth now to
14 ignore the situation that caused harm to Ms. Adams and
15 other people. So that's a real comfortable monetizing
16 result.

17 MR. CADDELL: Your Honor, we've got -- we
18 have provided you with a copy of Professor Richards'
19 report. I think I would have -- I was reading it this
20 morning on the plane. He, as you can imagine, like most
21 law professors, wrote his own report. And it was -- I
22 was struck by reading it again how when he talked about
23 the injunctive relief, he talked about tremendous
24 benefit, substantial benefit, great benefit, outstanding
25 change, that sort of thing. He was quite enthusiastic

1 about the settlement.

2 MR. BENNETT: Can I footnote this,

3 Your Honor?

4 We're very pretty high up in the national
5 association for consumer advocates and consumer groups,
6 but we did not know Professor Richards before this. We
7 said let's find a privacy acts expert and that's -- we
8 found him. He was a stranger to us. His credentials,
9 as you will see if you haven't already, are impeccable.
10 But I say that because one of the -- sometimes, there
11 are professional witnesses -- professional expert
12 witnesses, repeat witnesses, and that's not this guy.

13 MR. CADDELL: Your Honor, let me -- briefly,
14 the monetary relief component is, I think, a little
15 easier to cover, and I don't want to take up any more
16 time because I really want to get to Mr. Raether. I
17 think the Court will enjoy seeing what he's got to say,
18 and Mr. McCabe as well.

19 But the monetary relief settlement, and,
20 again, it's individuals who either requested a copy of
21 their file or disputed some of their file. And
22 LexisNexis will establish that a
23 13-and-a-half-million-dollar fund, payments will be made
24 pro rata to class members. Attorneys' fees, we've
25 agreed, by the way -- the agreement we had with

1 LexisNexis was that we would ask for no more than 30
2 percent of the common fund. We've agreed to cap our
3 request at 25 percent. And by that, I mean, Mr. Bennett
4 and Mr. Francis and I, we reached that agreement. And
5 Mr. Bennett felt that that given the district and given
6 the injunctive relief, frankly, although the two are
7 separate, they were negotiated separately, and they
8 actually deal with separate classes in many respects,
9 but we have decided that we would cap it voluntarily at
10 25 percent, the incentive awards at \$5,000 per named
11 plaintiff. The class members will receive a pro rata
12 distribution direct mail notice with a check. The
13 settlement will release all claims under the Fair Credit
14 Reporting Act and comparable State laws.

15 Let's see. I want to go back.

16 I did want to mention one thing in
17 conjunction with this, Your Honor. Some of these names
18 will go back a number of years. And I want to address
19 two things with respect to that. One, of course, some
20 of the addresses that we may have will not be current,
21 but LexisNexis, of course, is the best entity in the
22 country to find these people. So I'm confident that
23 through re-mailing, and we've already agreed that we
24 will do at least one re-mailing to people to make sure
25 that people get it. Having said that --

1 THE COURT: When you say get it, do you mean
2 the notice, or do you mean the check?

3 MR. CADDELL: Well, the notice and the
4 check.

5 THE COURT: Okay.

6 MR. CADDELL: The check is going to go out
7 to people. If they cash the check, then they will be
8 giving a release.

9 THE COURT: Got it.

10 MR. CADDELL: That's the way it will work.
11 They won't have to make a claim.

12 THE COURT: That's my question --

13 MR. CADDELL: This will not be a claims-base
14 only.

15 THE COURT: Right.

16 MR. CADDELL: It will be direct mail to
17 every class member, sending them a check. Negotiating
18 the check will be a release of LexisNexis --

19 THE COURT: Right.

20 MR. CADDELL: -- for their claim.

21 MR. BENNETT: This will be much more -- it
22 will be very similar, if not identical, to the multiple
23 class settlements that have made its way through the
24 Court in this District. It won't be any catches,
25 there's no secret reversion or claims barrier or the

1 like.

2 MR. CADDELL: Well, now, that's what I was
3 going to mention.

4 Inevitably, experience has taught us that
5 some portion of the class, either they lose the check,
6 they just don't trust class actions, whatever, there
7 will be some people who will not cash the check. And
8 there's nothing we can do to force them to do so. So we
9 have agreed with LexisNexis that sort of two things.
10 One, LexisNexis can get reimbursed to the cost of the
11 notice for both the injunctive relief and the monetary
12 relief, notice and administration, which won't be a huge
13 sum, but they can -- we've agreed that they could get
14 reimbursed that much from whatever is left, the residual
15 in the monetary relief fund. And then the balance would
16 go to cy pres, which, of course, we would address to the
17 Court and ask for Court approval, and the only
18 limitation we have on the cy pres, which we certainly
19 think is appropriate is LexisNexis has asked that the
20 cy pres not go to any -- to finance any litigation, and
21 we're fine with that. I just wanted to tie up that
22 loose end because the reality is no matter how we try,
23 we will have checks that aren't cashed, and so there
24 will be funds left over, and they will not revert to
25 LexisNexis except for LexisNexis can get reimbursement

1 for its notice costs.

2 THE COURT: When you're saying all of that,
3 you're saying that only as to the monetary relief class
4 because you said --

5 MR. CADDELL: The 13.5 million. Yes,
6 Your Honor.

7 THE COURT: But you said also both as to
8 injunctive and --

9 MR. CADDELL: The notice -- because,
10 remember even though they're not obligated to do so, we
11 will be doing a small notice campaign. I don't think it
12 will be terribly expensive, but it will be effective
13 because it's going to use the internet --

14 THE COURT: But that's as to the injunctive
15 class?

16 MR. CADDELL: Yes.

17 THE COURT: They are getting it from this
18 13.5 --

19 MR. CADDELL: That's the proposal.

20 THE COURT: That they can get a little bit
21 back for the folks that don't cash the checks or
22 participate for the notice of the injunctive class.

23 MR. CADDELL: Correct. Correct. That's the
24 proposal.

25 THE COURT: Notice and administration as to

1 both classes?

2 MR. CADDELL: Yes, yes. That's the
3 proposal. That's why I wanted to highlight that for the
4 Court and make sure that the Court was aware of that.

5 And then we're going to talk about
6 attorneys' fees -- actually, we've already talked about
7 both of those.

8 Your Honor, at this time, I'd like to --
9 of course, I'm available for any questions.

10 MR. BENNETT: The only thing I have just to
11 wrap it up. Regarding typicality in the questions
12 Your Honor said earlier on, it is our view that whether
13 this Court or Judge Spencer hears the preliminary
14 approval, we would submit a motion, which would include
15 the case law and the citations, and Your Honor is
16 otherwise familiar with, including typicality. To
17 summarize, at least, our view of the case law is that
18 it's -- while it will begin by saying that the Court
19 still needs to be rigorous in its consideration of the
20 elements for certification, it's always followed with,
21 however, in a settlement context (Inaudible portion.)
22 that you can construct a settlement class that while it
23 satisfies those elements, is looked at to some degree
24 differently than in an tested class. It's not simply a
25 matter of, well, now, we don't have an opponent

1 briefing. They're also is a different threshold for
2 law, although, it's a delicate threshold as articulated.

3 With respect to typicality, in our Soutter
4 victory, the Court held that we had defined our class
5 too broadly. We followed the opinion, we had convinced
6 Judge Payne through our guile to certify a class
7 representing multiple time periods where I client didn't
8 have the same willfulness evidence and did not have the
9 same proof of negligence or unreasonableness as the rest
10 of the class. And that, of course, is nothing
11 remarkable. That's typicality. That's why this is an
12 unpublished opinion that outlines how we failed in our
13 effort on typicality.

14 We don't -- this wouldn't apply other than
15 that was an FCRA case, unlike the other -- Williams,
16 where 23(f) -- was a much more comparable class
17 definition, the Court denied -- the Fourth Circuit
18 denied the 23(f). But you have in the range and the
19 class representative before you individuals who made
20 disputes and individuals who did not, individuals who
21 requested their file and individuals who did not, and
22 you have identity-theft victim, Mr. Hernandez, and you
23 have an inaccuracy in Mr. Oton (ph.). Mr. Oton (ph.), I
24 think that's how you pronounce it.

25 THE COURT: Oton.

1 MR. BENNETT: Oton.

2 And so we have the entire gambit of our
3 class definition represented from a typicality
4 standpoint. Separately, we will satisfy Your Honor, or
5 if it goes before Judge Spencer, Judge Spencer on
6 adequacy. These individuals were bedded because of
7 their -- they satisfied the class counsels' belief as to
8 a number of the elements as to adequacy.

9 Now, with a settlement, where we really
10 catch a break is on 23(b)(3) class, superiority and
11 predominance issues, the mechanics of litigating a class
12 become less important in the settlement.

13 But for typicality, which, but for Soutter,
14 I would have otherwise described as a very light burden.
15 It's what the case law always said and will continue to
16 say, but for Soutter, and that was a counsel error, by
17 the way.

18 MR. CADDELL: Thank you, Your Honor. And
19 unless you have some questions, I want to turn it over
20 to Mr. McCabe.

21 THE COURT: I think I've asked what I have.

22 Thank you.

23 THE LAW CLERK: All rise.

24 This Court stands in recess.

25 (Discussion off the record.)

3 THE LAW CLERK: The Honorable United States
4 Magistrate Judge M. Hannah Lauck presiding.

5 Court is now in session.

6 Please be seated and come to order.

7 MR. McCABE: Good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MR. McCABE: I'm Jim McCabe from Morrison
10 and Foerster. I represent LexisNexis, and I want to
11 thank the Court on behalf of LexisNexis for all of the
12 time you set aside to deal with this, and obviously the
13 preparations that you've done to hear us on this matter.

14 Lexis agrees with the plaintiffs that the
15 settlement upon which we've agreed is fair, adequate and
16 reasonable. Mr. Raether is going to talk about the
17 injunctive relief after I'm done. I would like to cover
18 for the Court for just a few minutes our perspective on
19 the (Inaudible portion.), which is the defendants'
20 defenses and difficulties of proof that the Court would
21 consider in determining the fairness and adequacy of the
22 settlement.

23 I think the Court will see that given the
24 issues in dispute in the case, that the plaintiffs have
25 secured substantial value for the class in a case in

1 which there was some very serious doubt as to whether
2 any recovery might be had. The core of the complaint is
3 that Accurint is a consumer report. That's the
4 threshold for all of this. There's no such thing as
5 coverage under the FCRA. There's no such thing as FCRA
6 governance. There's really only the question of is it a
7 consumer report or not. If it's a consumer report,
8 certain consequences float.

9 THE COURT: Mr. McCabe, I'm going to
10 interrupt you with a rather mundane question. I
11 obviously have this PowerPoint. Is this mine to keep or
12 this something that you get back?

13 MR. McCABE: No, you may keep it,
14 Your Honor.

15 THE COURT: I'm an active listener.

16 All right. Thank you.

17 MR. McCABE: All right. Very good.

18 So the whole premise here is whether or not
19 Accurint is a consumer report because these obligations
20 apply only in that circumstance. And it's important to
21 be precise about the definition because that is what is
22 going to govern the standard of the case.

23 Now, the plaintiffs here did not seek any
24 damages for negligent violation of the FCRA. That's a
25 strategic choice because a negligent violation claim is

1 one that is really not amenable of class treatment.
2 Negligent violation, one of the elements is injury or
3 damage. If you were to try to try that kind of a claim
4 in a class action common issue would not predominate.
5 Individual issues would predominate. And consequently,
6 the choice here was to assert that LexisNexis willfully
7 violated the FCRA because under the willful branch of
8 liability, the plaintiffs may recover statutory damages
9 in lieu of actual damages. Consequently, that is a much
10 more certifiable prospect. Okay.

11 So that carries with it a cost. And the
12 cost to plaintiffs is that under Supreme Court
13 authority, they must be able to show that the
14 defendants' conduct was not consistent with any
15 objectively reasonable interpretation of the FCRA.
16 Defendants can defeat the class case by showing that
17 their interpretation of the FCRA was objectively
18 reasonable. Even if it was wrong, it just has to have
19 been reasonable.

20 THE COURT: Okay.

21 MR. McCABE: And so here the issue is
22 whether we can read the FCRA's consumer report
23 definition to exclude Accurint reports, whether we can
24 do that reasonably. It's a question under Safeco versus
25 Burr of whether -- of the state of the law as of the

1 time of the alleged violation. That's -- it's much like
2 qualified immunity in that case law. And, in fact, the
3 Supreme Court drew expressly on qualified immunity case
4 law in forming any standard. It used clearly
5 established language. The idea, of course, in a
6 qualified immunity jurisprudence is that a government
7 actor is not liable for violating Constitutional Rights
8 unless in that circumstance, the rights are clearly
9 established, in which case, they have liability.
10 They're either free from liability or subject to
11 liability. In the FCRA context, actors are subject to
12 damages if they violate the FCRA even negligently. But
13 they are not subject to willfulness penalties if the law
14 is not clearly established.

15 As the Supreme Court said a defendant who
16 merely adopts one reasonable interpretation of a FCRA
17 violation cannot be a knowing or reckless violator of
18 the Act. And evidence of the defendants' objective to
19 understanding is irrelevant. That's footnote 20, and
20 the Court's analysis, as I've mentioned, drew heavily on
21 really establishing the concept of qualified
22 jurisprudence.

23 So the question that would have been
24 presented in this case had it been litigated -- had it
25 been actively litigated, Is it so clear that Accurint is

1 a consumer report that it was reckless for LN to have
2 treated it otherwise? Is it just that clear? If it was
3 simply a mistake for LexisNexis to treat Accurint as a
4 non-consumer report, there would be no recover in this
5 case at all because the case asserts only willful
6 violation claims.

7 So then the question becomes, Well, what
8 does the definition provide? Is it clear? Is there
9 clear authority from any source, whether it's the
10 statute or the Courts of Appeal or the Federal Trade
11 Commission as to the application of the consumer report
12 definition to the Accurint product. And the answer is
13 really there's not. The consumer report definition
14 itself includes communications that are intended to be
15 used as a factor to establish the consumer's eligibility
16 for and it lists a number of things. Creditor
17 insurance, employment purposes or any other purpose
18 authorized under 604(b). So it says eligibility for a
19 purpose. That's not terribly helpful. In fact, this is
20 just a brief excerpt. This is 90-word sentence with no
21 fewer than nine clauses that seem to refer to something
22 that precedes the clause in question, and the antecedent
23 is in many cases unclear. And this problem in the
24 construction of the statute runs throughout a number of
25 different issues that are presented in the case. That

1 simple contextual ambiguity is something that is a real
2 problem, we believe, for the plaintiffs in this case.
3 To be able to say, Look, you can read right from the
4 statute this is what it means. Because the defendant
5 can come along and say, No, that doesn't refer to
6 information, that refers to communication and whose
7 expectation or whose intent. Which one is relevant?
8 And in light of the fact that are no cases that have
9 applied the FCRA consumer report definition to Accurint,
10 that's a very important problem with the statute.

11 Now, because the statute refers to
12 eligibility for any other purpose authorized under
13 1681(b) and because 1681(b) permits consumer reporting
14 agencies to furnish reports to debt collectors, then the
15 plaintiffs contend that well, okay, if it can be
16 furnished to a debt collector, then it must be a
17 consumer report. If it contains seven-factor
18 information and it's furnished to a debt collector, it
19 must be a consumer report under this definition. And
20 the question then here is that construction of the
21 statute clearly established. The statute has to be read
22 to provide the eligibility determination modifies every
23 one of the subparts of the Supreme Court definition,
24 including any other purpose authorized under 604(b).
25 And in context among the legislative history, the

1 structure of the statute and the history of amendments
2 to the statute, it's our position and we believe we
3 would have been able to establish in litigation that
4 purposes brought within the eligibility in defining
5 purpose, the terms of the statute are really limited to
6 things a consumer would want. The whole point of the
7 statute was to make fair determinations for consumers in
8 their applications for credit, their applications for
9 insurance, their applications for employment and for
10 other transactions that the consumers wanted.

11 There are in 604(b) a large number of
12 permissible uses of consumer reports that have nothing
13 to do with what consumers want. None. And the argument
14 goes, therefore, when you construe the consumer report
15 definition, you really have to look to 604(b) and
16 include only those items in 604(b) that are eligibility
17 determinations as the kinds of determinations that
18 qualify a communication as a consumer report. That's a
19 valid point, (Inaudible portion.) It derives from the
20 language of the statute and circularity of the statute.

21 I do have what -- I have Jim Francis'
22 favorite diagram.

23 THE COURT: It was in a briefs report.

24 MR. McCABE: Yes, it was in the Adams brief.
25 It was in the Adams brief, and because he loved it so

1 much there, I use it whenever I can.

2 (Discussion off the record.)

3 MR. McCABE: The way we have read the
4 consumer report definition is that there are intended
5 uses of the seven-characteristic information that define
6 a communication as a consumer report. So there are
7 certain ones. If it is a communication that is expected
8 or intended to be used for certain eligibility
9 determinations, it is a consumer report. If those
10 eligibility determinations are credit, insurance and
11 employment, which are expressly mentioned in A and B of
12 the statute, for licensing that is based on prior
13 financial responsibility, that's in 604(b). For
14 consumer initiated transactions that are also mentioned
15 in 604(b), for continued maintenance of an account, the
16 same, and the government travel cards, the same. Now,
17 those are all mentioned in 604(b), and they are all
18 logically eligibility determinations for things that a
19 consumer would want.

20 The statute, though, is set up so that there
21 are things that a consumer report may be used for that
22 have nothing to do with eligibility. And those are
23 found in 604(b) in the context of the larger ellipse
24 here. For example, a consumer reporting agency may
25 furnish a consumer report in response to a court order

1 or a Federal grand jury subpoena. That has nothing to
2 do with eligibility. It can be furnished as instructed
3 in writing by the consumer. It can go to the FDIC when
4 the FDIC is looking at its revision of an institutional
5 and consumer debt. Frequently, the regulator at that
6 point wants to know the value of a portfolio and what is
7 this asset worth. And they can pull credit reports on
8 the debtors in order help evaluate the value of the
9 portfolio. And the same thing with debt purchasers.
10 They can use them to assess creditor payment risks when
11 they are going to be buying a portfolio of, say, credit
12 card debt. But the fact the information is prepared for
13 that purpose and the fact that information is prepared
14 to respond to a Federal grand jury subpoena or that
15 information is prepared to make a child support
16 determination, doesn't make it a consumer report. It
17 must be for eligibility determination, and that's what
18 qualifies it. Once qualified, it may be used for
19 broader purposes.

20 Where that lead us, though, is that we have
21 other uses of the seven-characteristic information that
22 don't qualify communications as a consumer report but
23 that are also useful to those institutions or for those
24 purposes that are in the middle here. In other words,
25 there is information about -- you know, address and

1 vehicle information that may be used by law enforcement
2 personnel, information that is useful in finding to
3 them. It's useful to know what car a person is driving
4 or to be able to locate them as a witness or as a
5 possible suspect in a crime. That same information may
6 be provided to a debt collector, but it doesn't
7 transform that information into a consumer report.

8 THE COURT: No. I'm with you.

9 MR. McCABE: Okay.

10 THE COURT: And I'm hearing what you're
11 saying.

12 MR. McCABE: Okay. Good.

13 So the position that we've taking here and
14 this construction of the statute is one which we believe
15 is supported by the language in the statute and is
16 supported by a number of decisions from the FTC or
17 advice from the FTC over the years in various formal and
18 informal letters and in a bunch of case law that
19 construes and applies the application of consumer report
20 definition to information used in other circumstances.
21 And this, we believe, is a reasonable construction of
22 the statute.

23 Turning to Accurint, it is a report that is
24 not to be used for eligibility determination purposes.
25 It's an on-line tool that can be used to find and locate

1 people and businesses, it can be used to prevent or
2 detect fraud. And the way it does that is it allows
3 users to confirm that they're dealing with the right
4 person.

5 I can give you a personal anecdote. I went
6 to buy my wife a piece of jewelry one time at Macy's in
7 San Francisco, and I presented my credit card. And the
8 sales person came back and handed me the phone. She
9 said, They want to talk to you. And so I got on the
10 phone, and they said, Well, where did you live when you
11 first grew up, you know, what was your address and some
12 other random question, I don't what. And they said
13 okay, fine, give me back to the sales person, and they
14 approved the transaction. The purpose of that call
15 there, and they very likely using Accurint, was to be
16 sure that the person to whom the account had been issued
17 was the person who was standing at the counter
18 proceeding to make the purchase. That is to prevent or
19 detect fraud and to verify the identity of somebody with
20 whom you're dealing. Historical information that would
21 be known only to the consumer or likely to be known
22 quickly only to the consumer is information that could
23 be used to prevent or detect fraud.

24 Accurint is used by law enforcement to a
25 large extent. There's a product called Accurint for Law

1 Enforcement. There are literally thousands of law
2 enforcement agencies throughout the country that use it.
3 They use it to find and locate witnesses. They have
4 used it successfully -- the number of success stories
5 that we have regarding child abductions. Child
6 abductors often go back to places that they have been
7 before, and information about prior residences and the
8 locations of family members could be very useful in
9 those detection efforts. It's used by collections as
10 you've heard from plaintiffs here. There are other
11 government applications as well. Lawyers use it to find
12 witnesses, if hey were simply to go to gather
13 information about people and in healthcare as well.

14 The product is basically an aggregation of
15 publicly available information. It serves -- if you're
16 looking, for example, for Kristin McGrady, and you were
17 to go on-line right now and look through publically
18 available real estate records, you might find 50 Kristen
19 McGradys with different addresses all across the
20 country. And you could then pick up the phone and call
21 each of the 50 of them. But the value of Accurint is
22 that it takes public record information from many
23 different sources and predicts that this Kristen McGrady
24 is the one who now lives here and used to live there as
25 opposed to someone who now lives there and used to live

1 there. And it cuts down the amount of time and effort
2 necessary by someone to find someone that would be
3 consumed by going through sequentially various different
4 public records and sources to try to piece this
5 altogether. And the value to debt collectors is they
6 want to know they've got the right person. They've got
7 a live phone and want a current phone number because
8 they don't want to waste time getting on the phone with
9 someone who says that's not me or he doesn't live here
10 anymore. That's the real value.

11 Now, Accurint is not intended to be used for
12 making any eligibility determinations. Mr. Caddell
13 showed you the front page for an Accurint search. In
14 his presentation here, (Inaudible portion.) which says
15 Accurint does not constitute a consumer report as that
16 term is defined in the Federal Fair Credit Reporting
17 Act. Accordingly, Accurint may not be used in whole or
18 in part as a factor in determining eligibility for
19 credit, insurance, employment or any other impermissible
20 purpose under the FCRA.

21 So this is something that the consumer --
22 that the user has to consent to, and it's in the terms
23 of service. It's done again on the front page of the
24 web, and we consistently get representations from the
25 user that they're not using this for eligibility

1 purposes. And it's part of the screening before they
2 are signed up to use the Accurint product. If it turns
3 out that they're looking for something that they're
4 going to use to make eligibility determinations, they'll
5 be steered to a different LN product.

6 THE COURT: Well, let me ask you about that
7 a little bit.

8 I mean, just by way of background, this is
9 really in the settlement context. If you have a locate
10 option --

11 MR. McCABE: Uh-huh.

12 THE COURT: -- how are you determining that
13 somebody is not using it for debt collection? I mean,
14 really you're going through the intent of your customer.

15 MR. McCABE: Yes.

16 THE COURT: And so they are saying we don't
17 intend to do it, and I get that you get you sort of
18 shift the risk, but if you actually have a process that
19 says, you know, we're going to sell you a different
20 product if you're really doing something different.
21 What is that process, or was it -- I know you're in the
22 process of developing --

23 MR. McCABE: There's something called
24 credentialing. When a new account comes on-line,
25 they're questioned about what their business is and why

1 is it they need the product, and if they say that
2 they're making -- well, let me back up.

3 THE COURT: I mean --

4 MR. McCABE: LN at this point does not
5 believe and did not believe that any information sold to
6 debt collectors is necessarily a consumer report. We
7 are agreeing in the settlement to treat large bundles of
8 information sold to debt collectors as consumer reports
9 going forward, but to date, there has been no -- that
10 has not been the position and that has not been the
11 structure of business.

THE COURT: Right.

21 THE COURT: But to -- I didn't mean to cut
22 you off, but really there was no sort of sub-screening
23 for debt collectors? You just sold them this product
24 because you didn't think this is a consumer report?

25 MR. McCABE: Right. Well, there's a range

1 of products. They sign up for Accurint, then -- when
2 they sign in on that screen that you've seen, they can
3 choose -- they have to run a search first. They have to
4 supply some information, and that will get them back
5 basically search results like Len was describing. Len
6 Bennett from Newport News, Leonard A., and Leonard
7 Bennett, and so they'll get a list of information. If
8 they want anything more than search results, if they
9 want to get the information that's clustered around one
10 individual, they have to click through and order a
11 report on that person.

12 THE COURT: Okay.

13 MR. McCABE: And when they get the report,
14 they can choose the scope of the report. They can chose
15 a person-finder report, which will basically just give
16 the name, address and phone number. They can choose
17 phones-plus, which may give them cell phones, or they
18 can go to the end, the highest volume of information and
19 ask for a comprehensive report. But there's a whole
20 range of slicing and dicing in between in which the
21 amount of information and the type of information
22 varies. And that's the choice --

23 THE COURT: I guess I'm trying to understand
24 the logic where I made the comment earlier that it's a
25 little commonsensible to me that you don't need to know

1 about fishing licenses necessarily to locate somebody or
2 you don't need to know the median income.

3 MR. McCABE: Right. That's essentially
4 extracted information that's --

5 THE COURT: Right. But that's really driven
6 by the debt collector, what they use.

7 MR. McCABE: Yeah, what they use.

8 THE COURT: Yes.

9 MR. McCABE: And they may use it for
10 prioritization.

11 THE COURT: All right.

12 MR. RAETHER: I was going to address the
13 question when I got up and spoke, Your Honor, but I
14 think it's important to recognize that this product
15 was -- originally, this was designed for all sorts of
16 different marketing reasons.

17 THE COURT: Right.

18 MR. RAETHER: One of those being law
19 enforcement. So when you look at the census data that
20 relates to real property, I think it's very valuable or
21 has been valuable to law enforcement in looking for
22 money laundering, for example. So if I have a drug
23 dealer who is living in \$450,000 house, but he's
24 reporting \$10,000 a year in income, that provides a red
25 flag for law enforcement. When law enforcement is using

1 this type of data, it's essential to them. The layout
2 in terms of technically how to design things, it was
3 back in 1999. So we're talking about technology that's
4 fairly old.

5 THE COURT: Right.

6 MR. RAETHER: And so the layout that was
7 designed for law enforcement is the same layout that
8 could potentially be available to somebody in the
9 collection industry.

10 THE COURT: All right.

11 MR. RAETHER: And they can pick and choose.

12 Now, the other thing that we know is that
13 collection agencies is that some of them consider
14 themselves to be creative. So the fishing license --
15 for example -- or more likely for a pilot's license, it
16 may be so I know if I have the right John Smith or not.
17 It's a common name, I might know that my John Smith
18 flies an airplane or owns an airplane or works as a
19 commercial fisher-person. And so having that
20 information, on the report for John Smith saying that
21 they have this particular license, allows the collection
22 individual to say I have the right John Smith.

23 THE COURT: Okay. Thank you.

24 MR. BENNETT: Judge, you're actually getting
25 it. A lot of this was for the off-docket litigation and

1 these are the issues that divide us.

2 THE COURT: Right.

3 MR. McCABE: Exactly. That's right.

4 And so on the -- moving forward on the
5 Jiffy-Lube factors in terms of the difficulties of proof
6 that the plaintiffs would encounter and the series of
7 defenses. One of the big issues that the plaintiffs are
8 going to have to contend with here is the fact that the
9 Federal Trade Commission has said that Accurint is not a
10 consumer report. Now, this, keep in mind the Federal
11 Trade Commission at this time was the -- enforced the
12 Fair Credit Reporting Act as to the consumer reporting
13 agencies in addition to the Federal Trade Commission
14 Act. And in 2005, Seismic discovered that there had
15 been a security breach with respect to accounts
16 maintained by its subscribers, that a number of law
17 enforcement agencies and debt collectors and others had
18 been hacked, and their accounts at Accurint had been
19 used for other reports that were not authorized.
20 LexisNexis advised the FTC of this, and the FTC
21 investigated and came in and looked it over. They filed
22 a complaint and consent decree with respect to Accurint
23 that called for changes in the way in which Accurint did
24 business and for certain monitoring to take place for
25 years going forward. That settlement was published in

1 the Federal Registry for Public Comment. And in
2 response to the settlement, a letter came in from
3 EPIC -- I think it was EPIC objecting to the settlement
4 saying, Look, you should have gotten penalties under the
5 FCRA like you did in the ChoicePoint case, which was a
6 prior settlement in which ChoicePoint had unwittingly
7 given accounts to identity thieves. And the FTC came
8 back in a response to the comment, and this was a letter
9 was approved by a vote of the full commission saying,
10 Well, we got penalties in ChoicePoint because those were
11 credit reports -- I think they used the term, those were
12 credit reports -- but we can't get those kinds of
13 penalties here because these are not credit reports,
14 meaning consumer reports. So that is a statement that
15 Accurint is not a consumer report.

16 THE COURT: Could I just make sure -- I
17 mean, I've read through the footnote in the consent
18 decree. The Seismic, that involved Accurint, not any
19 kind of -- what is the other one? Securant (ph.)?

20 MR. McCABE: Correct. Yeah.

21 THE COURT: That involved Accurint.

22 MR. McCABE: It involved Accurint.

23 And so then --

24 THE COURT: And the Accurint was used for
25 what purpose in that FTC case?

1 MR. McCABE: These were -- all the purposes
2 that we're talking about here --

3 MR. RAETHER: There were 49 different users
4 who had their systems hacked --

5 THE COURT: Because of the password problem.

6 MR. RAETHER: And those 49 users ranged from
7 law enforcement to collection agencies, all of the list
8 of users that Jim had mentioned earlier.

9 MR. McCABE: Law firms.

10 MR. RAETHER: Law firms.

11 MR. McCABE: It was kind of random. I mean,
12 they used a variety of social engineering --

13 THE COURT: Okay.

14 MR. McCABE: Keystroke captured it.

15 THE COURT: Right. Okay.

16 MR. McCABE: And so we have the FTC saying
17 they're not consumer reports.

18 And Mr. Caddell mentioned the Adams decision
19 on the motion for judgment on the pleadings, but there
20 was a further proceeding in that case, which was the
21 motion for reconsideration.

22 THE COURT: Yes.

23 MR. McCABE: After the Court entered its
24 order regarding the characterization -- or denying the
25 motion for judgment on the pleadings, we filed a motion

1 for reconsideration, and you'll see here at the bottom,
2 there was a long discussion at the hearing for the
3 motion for reconsideration regarding what the Court had
4 meant. And Judge Plum (ph.) indicated -- she said that
5 I think you've all misunderstood what I meant to do in
6 my motion or what I meant by my motion denying the
7 motion for judgment on the pleadings. She said that she
8 wasn't in a position to grant a motion for judgment on
9 the pleadings, but if at the end of the day, there was
10 no contrary authority to this 2008 letter that I just
11 referred to, then summary judgment would be entered for
12 the defendants. What she explained was that she wasn't
13 clear from the record that was before her that the
14 letter on which we had relied was one that was equally
15 available to the plaintiffs and that it had not been
16 superceded by some other statement by the FTC. And so
17 her explanation was, Look, you know, if there's
18 something else out there that maybe you wouldn't win,
19 offered Mr. Francis the opportunity to come forward with
20 some other contrary statement, do you want time to do
21 this, why should I do this now, why don't we just wait
22 for summary judgment. And that was what immediately
23 preceded the dismissal of the class claims in Adams and
24 the ultimate settlement of the case on an individual
25 basis. And so I think the -- it's important to

1 emphasize here for Jiffy-Lube purposes the weight of
2 that comment and its reflection on the value of the 2008
3 letter from the FTC.

4 There's one other practical construction
5 fact that the plaintiffs would have to contend with in a
6 litigated resolution of the case, and that is the wide
7 use of Accurint by government and law enforcement
8 agencies. In general, it's illegal for government or
9 law enforcement agencies to procure consumer reports.
10 They just can't do it. They can't -- in investigating a
11 crime, they can't just pull a credit check. It's not
12 one of the permissible purposes that is enumerated in
13 the FCRA for furnishing a consumer report. There are --
14 as I said earlier, there are thousands of law
15 enforcement agencies and government agencies that use
16 Accurint reports for investigative purposes. FTC is
17 fully aware of this. They knew of it in the data-breach
18 investigation. And this fact -- the fact that the
19 agencies are out there buying this stuff, including the
20 FTC, which has an Accurint account -- the fact that
21 these agencies are out there buying these reports is a
22 practical construction of the consumer report
23 definition. In other words, they are -- let's presume
24 for a moment that they have actually thought about this
25 and that they are trying to do the right thing and they

1 are trying not to do something illegal, they're
2 nonetheless buying consumer reports in very large
3 numbers. Wholly apart from the fact that it's a
4 practical construction of the statute, it also
5 furnishes, I think, a policy reason for why one would
6 not expand the consumer report definition in the way
7 that the plaintiffs are now advocating. To do so would
8 deprive law enforcement of a very valuable tool to them.
9 This basically fusion of publically available data that
10 distills things down and predicts the likelihood that
11 they relate to a single person. It's a very valuable
12 investigative tool, and one that would not be available
13 to law enforcement were the plaintiff to prevail
14 characterizing these reports as consumer reports.

15 Just one other recent development on the
16 willfulness standard. There's a Third Circuit decision
17 last month in a case involving the consumer report
18 definition and the willfulness claim -- Mr. Francis was
19 involved in it -- in which the Third Circuit tried to
20 apply the consumer report definition to a report that
21 reported property tax liens on a particular piece of
22 property. And Judge Davis in the Eastern District of
23 Pennsylvania had gone through the consumer report
24 definition and the history of the FTC's pronouncements
25 with regard to the consumer report definition and said

1 that it was a really astonishing lack of authority
2 en point and that it could not be said that it was
3 clearly established that the consumer report definition
4 applied to that particular report before the Court,
5 which is a little different than that here.

6 Importantly, the Third Circuit confirmed the
7 number of positions with regard to SafeCo, that
8 LexisNexis had advanced here and that the plaintiffs had
9 disputed, but I won't go through those at great length
10 because we're not here to ask you to resolve anything,
11 just to appreciate the complexity.

THE COURT: Right.

13 MR. McCABE: So I think in summary, I can
14 say that a favorable outcome in this case for the
15 plaintiffs is subject to some substantial doubt. And
16 for that reason, that is a factor to be considered under
17 Jiffy Lube. The entire case is predicated on the
18 classification of Accurint as a consumer report, that
19 classification being clearly established, the statute is
20 poorly written, ambiguous, circular, confusing. I have
21 spent -- I'm sure Len has done the same thing -- spent
22 many a night lying awake wondering what it all really
23 means.

24 MR. BENNETT: You that I have.

25 (Discussion off the record.)

1 MR. McCABE: And yet, you know, the FTC has
2 stated that Accurint is not a consumer report, and we've
3 got thousands of agencies out there treating them like
4 they're not a consumer report.

5 And nonetheless, it's that background, but
6 the plaintiffs have negotiated some very substantial
7 benefits to the class. And so I think it might balance,
8 the factor favors approval of the settlement as fair,
9 accurate and reasonable.

10 Unless, Your Honor, you have further
11 questions for me, I'll let Mr. Raether describe the
12 injunctive relief.

13 THE COURT: No. I think that was very
14 helpful.

15 Thank you.

16 MR. RAETHER: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. RAETHER: I am Ron Raether of Faruki,
19 Ireland and Cox for LexisNexis.

20 You know, when we were trying to plan today,
21 I thought I should go first because what I have to say I
22 think is the most substantial important thing for us to
23 convey to you today. I promise you I won't take an
24 hour-and-forty-five minutes, and I probably won't take
25 45 minutes. So I'll be as quick as I can in being able

1 to convey to you the significance of what I think we've
2 accomplished here because, you know, we really have. I
3 mean, putting aside the differences in opinion with
4 regard to the law, when I step back and I look at the
5 injunctive relief that we've been able to put together
6 for the benefit of the class, it really is significant.
7 It's really substantial. And I can say that from the
8 defense table and having dealt with this industry for
9 going on 15 years, that what we've been able to do
10 really is a major shift in the market, that it's fair.
11 When I look at what's in the market and I look at your
12 commonsense approach, which I think most people take
13 when they look at data and they look at these complex
14 issues, ultimately, when we're addressing the jury, it
15 comes down to commonsense. And I think what we've
16 structured and what we're proposing really meets that
17 commonsense element. Then when you look at what
18 LexisNexis is being asked to do, this is not a small
19 undertaking. And I've had this conversation with Len
20 before, and not to minimize what they accomplished in
21 California with White-Hernandez (ph.), to me that was a
22 drop in the bucket compared to the complexity of what's
23 being required of our client in terms of this injunctive
24 relief. We're not flipping a switch, you know, in terms
25 of electricity in this building. To me, bankruptcy is

1 the switch. What we're doing is changing the whole
2 electrical system in this building. That's the
3 equivalent, I think, in our injunctive relief, and it is
4 substantial.

5 And if you look at really what we tried to
6 do when we put this injunctive relief together was
7 address the issues in the complaint. It is a
8 significant shift. The investment -- you know, we
9 talked about 5 million, but it's really 15- to
10 20-thousand hours of times is what it's going to take
11 just in terms of engineering. So in terms of people
12 sitting down at a computer, writing code, people coming
13 up with development, figuring out how they're going to
14 present this to the market because it's going to have a
15 considerable impact on LexisNexis' customers. They are
16 accustomed to seeing the interface which is Accurint.
17 They're going to be something new. And we have to walk
18 them through that educational process. It's going to
19 take a lot of time and a lot of resources. And I guess,
20 most importantly more than Jiffy-Lube factors (Inaudible
21 portion.).

22 So if you look at -- and I'm not going to
23 spend because of the limited time that we have, what I
24 can say is that I think we've addressed the issues
25 raised in the complaint. So we're talking about use,

1 what data can be used for certain uses, what data should
2 be used for uses that meet the definitions of consumer
3 report, it ought to be characterized as such and it's
4 subject to the responsibilities that go along with that
5 definition. Competitors generally don't do this. If
6 you look at the market, this is really going to be what
7 I consider cutting-edge. We're going to be leading the
8 market in terms of collection uses and what data is
9 available to them for the various uses.

10 So what are we proposing? You know, I think
11 that this case, while we've talked a lot about very
12 detailed legal issues, really it came down to the
13 consumers out there. And consumers are being pursued by
14 collection agencies. That was, I think, the genesis of
15 the Adams complaint. And so what we've done in the
16 injunctive relief is we've looked at Accurint, we've
17 decided that we're going to take Accurint and build a
18 product that's unique for collection uses. We're
19 actually going to build two products. We're going to
20 build one that's going to meet the definition of
21 consumer report, and thus be subject to all of the
22 requirements that go with that definition. We're going
23 to build another product that is just going to be used
24 for skip-and-locating. And we'll get to that in a
25 minute. (Inaudible portion.)

1 I won't belabor the point, but you know, if
2 it's a consumer report, there's a lot of rights that go
3 along with that. We have to have accuracy, we have to
4 credential, we have to make sure that they have
5 permissible purpose, and we have to give them a right to
6 request a copy of their file. If it's a consumer
7 report, we have to give them a right to dispute. On
8 contractual commitments, certifications, all of those
9 things go along with data, that we're agreeing through
10 settlement is going to be a consumer report going to
11 meet that definition.

12 We're also agreeing in this settlement that
13 this contact-and-locate product is not going to be a
14 consumer report. But in that context, we are agreeing
15 upon limitations both in terms of the data that can be
16 in that report product, as well as the uses of that
17 data.

18 THE COURT: Could I ask you a question. I
19 should have asked both of you earlier. You're both
20 referring to the receivable management market, and
21 you've referred me in this set of information to
22 Exhibit A to the complaint, which I just couldn't find.
23 Could you just orally tell me what market you're talking
24 about? Is it just the collections market?

25 MR. RAETHER: Yes. It's a fancy way of

1 saying the collections market.

2 MR. BENNETT: Collections -- when I started
3 practicing, most collections were all third-party agency
4 and principal, and now, they're mostly debt buying. So
5 Midland, Encore, for example, Portfolio Recovery, they
6 just buy defaulted debt. They outmoded receivable and
7 they are collecting their own, but a lot of this is
8 performed by our understanding of governance by the Fair
9 Debt Collection Practices Act. So as to our thought
10 process, the debt collectors should be governed by the
11 Act --

12 THE COURT: Right.

13 MR. BENNETT: -- the debt-buyers.

14 THE COURT: Thank you.

15 MR. RAETHER: To police first-party
16 collectors. I mean, exactly what Len is talking about.
17 There's a lot of different types of entities that are
18 now collecting the debt.

19 THE COURT: I just want to make sure that it
20 wasn't --

21 MR. RAETHER: We're trying to capture all of
22 those -- in using the term -- within the industry.

23 MR. BENNETT: Correcting myself, Judge, this
24 would govern uses beyond -- as Ron just said -- beyond
25 simply those that would attempt to collect debt under

1 the FTC Act. It would govern direct creditors, first
2 parties that are collecting their own debt, as well as
3 fiduciaries or others that might have exceptions
4 collecting non-billable or non-defaulted debt.

5 MR. RAETHER: We're using the term
6 (Inaudible portion.).

7 THE COURT: For just the contact-and-locate,
8 or is that applying both to the injunctive relief?

9 MR. RAETHER: It's applying to the entirety
10 of the injunctive relief.

11 THE COURT: Got it. Okay.

12 MR. RAETHER: So if you think about it, a
13 customer will come in and we'll say, What do you do?
14 They'll say, We're in debt buying business or we're a
15 third-party collector or we have this first-party
16 collector group, and the people that intake that call
17 will say, We need to put them on
18 collection-decisioning (sic.) or contact-and-locate and
19 not any other product for these purposes and uses.

20 THE COURT: All right. I shouldn't have to
21 admit to that I didn't know exactly what you meant, but
22 I'd rather admit it and get it right.

23 MR. RAETHER: I appreciate that.

24 THE COURT: Okay.

25 Mr. RAETHER: So, again, focusing in on

1 contact-and-locate because I think this is, you know,
2 where we admit that a report or a search or a service is
3 going to be a consumer report, all of the requirements
4 of the FCRA that go along with that, where the detail
5 begins to, I think, become more important is when we're
6 talking about contact-and-locate and what's going to be
7 permitted with respect to that product because the FCRA
8 -- you know, the definition of consumer report is not
9 going to apply. So we have to think of that little bit
10 differently.

11 And so we start off with the available data.
12 So what type of data is going to be made available in
13 the contact-and-locate non-FCRA version of what we're
14 talking about. And Mike, I think, spent quite a bit of
15 time talking about the seven characteristics, the
16 bear-on type of information. There are certain types of
17 information that generally have been agreed upon do not
18 bear on eligibility, do not bear on these
19 characteristics, and so that would be permitted.

20 We also went through in some detail and
21 talked about certain other types of information that may
22 be a little bit grayer. But we provided an explanation
23 as to how that relates to skip-and-locate. So based on
24 those negotiations with plaintiffs' counsel, we came to
25 an agreement on certain types of other data that could

1 be in the contact-and-locate.

2 MR. BENNETT: We went through whether
3 fishing licenses should be included, pilots licenses,
4 mortgaged property, a lot of the delay, Your Honor, was
5 productive use of time.

6 THE COURT: Right. No. I believe that.

7 MR. RAETHER: But even deeper than that,
8 what elements from that public data ought to be in
9 contact-and-locate. So, I may get 20 elements of data
10 from the Department of Fisheries from Alaska, maybe only
11 five of those elements actually relate to
12 skip-and-locate, so only those five will show up in the
13 contact-and-locate report.

14 And we have an example here of the one that
15 you essentially raised or that we have been talking
16 about, the median household example. We still provide
17 information on property because people want to know the
18 address and where to locate people, but what we've
19 eliminated, however, is that census data about median
20 household income or value of the home.

21 We're going to have in both products built
22 within the system a means by which the user will know if
23 they're in the right place or not. So the language that
24 we're looking at here, Your Honor, relates to the
25 contact-and-locate. And so when a user logs in, when

1 they sign their contract, it will help provide guidance
2 when they're in the right place or the wrong place.

3 The other thing --

4 THE COURT: Let me just be clear. This is
5 not different than the what you already have; is that
6 right? This is essentially the same waiver?

7 MR. RAETHER: It's slightly different.

8 THE COURT: Okay.

9 MR. RAETHER: It's not exactly the same.

10 THE COURT: All right.

11 MR. RAETHER: And there is going to be -- a
12 suspension period. It's going to be contractual
13 commitment, certification. Really what we -- Jim
14 referred to as credentialing, that's really where we're
15 going to vet the user and decide what product is
16 appropriate for that particular and their intended uses.

17 So it's not -- I think Your Honor had
18 mentioned earlier, and I'm not sure I agree entirely
19 with the characterization that we were shifting the
20 entirety of the burden to the user because we did have
21 the credentialing process in place, even today. So
22 there is this -- there is some need for the user to be
23 frank with us during this credentialing process, and we
24 will have methods in place to allow that conversation to
25 occur so that we can guide them into the right products,

1 but ultimately, they have to make that database
2 decision.

3 MR. BENNETT: And, Your Honor, there will be
4 substantial distinction in this same category, where
5 this might have been the almost exclusive, not entirely,
6 but almost exclusive hurdle under the old system. The
7 new system in the navigation process, there will an
8 additional automated vending process to direct someone
9 away from the FCRA or towards the FCRA's module.

10 MR. RAETHER: And to be frank, I think that
11 the data that we're making available for those decisions
12 that we were talking about, those negotiation as to what
13 goes into contact-and-locate, and what more importantly,
14 will not be in there any longer, really I think deals
15 more with the issue as to question of use.

16 THE COURT: Right.

17 MR. RAETHER: Because the data elements that
18 may have given plaintiffs' counsel concerns are no
19 longer in contact-and-locate.

20 THE COURT: Right. I have to say that
21 sounds like --

22 UNKNOWN SPEAKER: Your Honor, I'd like to
23 point out that the Fair Credit Reporting Act, the user
24 is subject to liability under the FCRA if they falsely
25 certify their purpose. So in this case, if the debt

1 collector looks at this and tries to use
2 contact-and-locate or vice versa, they're subject to
3 liability, which is the consumer may cause of action
4 against them under the FCRA.

5 THE COURT: Right. Okay.

6 MR. RAETHER: So one of the things that
7 we've been working on is trying flush out and put
8 together an example of what these new products may look
9 like to help the conversation and negotiation not only
10 for plaintiffs' counsel, but also to help ultimately the
11 Court, and I think others, to understand the real
12 significance of what we've accomplished here. I say
13 that for two reasons. One is that it is intended to be
14 exemplary. I think it was mentioned earlier that it's a
15 fluent market. Technology is constantly changing. We
16 would not be, I think, good counsel to our client if we
17 agreed to lock them into something that would put them
18 kind of at a competitive disadvantage seven years from
19 now when none of use has a crystal ball and can tell
20 what's going to happen. The other reason -- so we put
21 together this presentation, it's exemplary, it's meant
22 to help guide the conversation. It's not meant to be
23 perceived that we're going to be locked into these
24 specific things except for the data that -- the general
25 principals about what data is going to be permitted.

1 The other reason that it's important and just to take a
2 step aside for a moment is this a competitive,
3 sensitive, sensitive issue for our client. It is a
4 substantial major change in the market not only from our
5 competitors who are doing something different, but from
6 the user base that's out there. So when this settlement
7 goes public, when it's approved, those users will have a
8 choice. They'll have a choice to do what I think is the
9 proper thing, the more compliant decision, and that's go
10 with LN's product, but there will be users that make the
11 wrong decision and decide to go with the competitor's
12 product. But given that, our client --

13 MR. McCABE: We promise to do what we can to
14 make competitors do the right thing.

15 THE COURT: Speaking of that cause of
16 action, it's still available. Okay.

17 MR. BENNETT: They'll going to help us
18 locate service information.

19 (Discussion off the record.)

20 MR. RAETHER: But I think the other
21 important reason, Your Honor, is that this is exemplary,
22 and it does show a tremendous amount of detail in terms
23 of what is contemplated by the design. You know that in
24 the class-approval process, there's the first
25 preliminary approval, and what that does is allows the

1 parties to send out notice to the class to allow the
2 class and to evaluate, come back. It may or may not get
3 objectors. It may get people that say this is a great
4 settlement. There may be retractors. But ultimately,
5 the Judge -- Judge Spencer will take all of that
6 information, analyze it and decide under 23(e) whether
7 the class ought to be approved or not. That could a
8 couple of months because we're doing publication notice.
9 Our client is concerned that if the details of this
10 injunctive relief in terms of the exemplary screen shots
11 were to get out to the public, that our competitors
12 would use that during the period of preliminary
13 approval. So what we've done is we've talked to
14 plaintiffs' counsel, we've put together what I think is
15 a good compromise on those issues. And when we get to
16 the point, Your Honor, of actually having of piece of
17 paper of what we intend to propose for the Court, we do
18 have a procedural mechanism by which to both protect
19 LexisNexis from this competitive disadvantage in making
20 all of this information public while still allowing the
21 class -- punitive class members to have an opportunity
22 to come and possibly view some of these details, and
23 that's in the form of an amendment to the stipulated
24 protective order that was entered in this case in
25 August, 2012. And what we would propose is a process by

1 which a class member if they want to see these details
2 and give plaintiffs' counsel a call, set up a time to go
3 and visit Mr. Anthony's office and be able to physically
4 view all of this information without making copies, sign
5 an acknowledgement of the stipulated protective order
6 that they're not going to use those materials outside of
7 the 23(e) process in an evaluation. And really, it's
8 meant to prevent our competitors from being able to go
9 and pull this information.

10 THE COURT: Right.

11 MR. RAETHER: Your Honor, I think that,
12 frankly, is more than would be required in order for the
13 Court and for the class to evaluate the reasonableness
14 of the settlement. I think that really goes above and
15 beyond what the case law would require. I think there
16 will be a description of the nature of the settlement,
17 and I think any class member will get a sense of the
18 benefits. The primary benefit is that, you know, this
19 product sold for collections will be subject to the Fair
20 Credit Reporting Act. That's really -- I mean, boom,
21 right there, the class member knows this is something
22 that's not happened before, it's a big change, and I'm
23 going to get the benefit of that. So this really goes
24 beyond that. If someone wants to do that, then that
25 opportunity would be afforded to them.

1 THE COURT: And that will be in the notice,
2 presumably?

3 MR. RAETHER: Yes, Your Honor.

4 MR. BENNETT: Mr. Anthony and I (Inaudible
5 portion.)

6 THE COURT: So who pays for somebody to come
7 to your office, Mr. Anthony?

8 MR. ANTHONY: (Inaudible portion.)

9 (Discussion off the record.)

10 MR. RAETHER: I think Mr. Caddell makes a
11 good point. We talked about earlier the 23(c) doesn't
12 necessarily require notice, but there is a due process
13 fairness component to this. We are, I think, going
14 above and beyond in providing notification --

15 THE COURT: Right.

16 MR. RAETHER: -- publication notice and this
17 process as well.

18 THE COURT: Okay.

19 All right. That makes sense.

20 MR. RAETHER: I'm going to run through this
21 quickly, but I just want to really provide you with some
22 of the basic concepts, and obviously, the detail is in
23 the set of slides that we're going to leave with you.
24 You can certainly look at that. My guess is that we'll
25 have another opportunity to talk again and address any

1 questions.

2 But there are some substantial changes.

3 What we've done in this slide presentation is we've
4 taken a look at -- we're giving you a snapshot of what
5 the product looks like today, and then to give you a
6 comparison of what we're planning to do for the
7 injunctive relief. And so what you're looking at right
8 now would be the homepage for the collections portal.
9 So this would be if I'm a collections user being given
10 access via a website, I can login, and I can choose
11 either to go to -- it says skip-and-locate because we've
12 changed the name to contact-and-locate. The marketing
13 people are still fiddling around.

14 THE COURT: Did they choose that word
15 decisioning?

16 MR. RAETHER: Decisioning --
17 collection-decisioning? Yes, they chose that.

18 THE COURT: Did they know that's not a word?

19 MR. RAETHER: They need feedback from you.

20 THE COURT: That's not a word.

21 MR. RAETHER: Marketing people, they're not
22 worried about grammar.

23 THE COURT: They're so wrong.

24 MR. RAETHER: But I think the critical thing
25 here to point out is twofold. One is that we're using a

1 color scheme to help the user know when they're in
2 the -- when they're in a consumer report and when
3 they're in the product that's not a consumer report. So
4 the blue is -- it's why Mr. Bennett earlier was
5 referencing blue. And I don't know what color green
6 that is.

7 MR. BENNETT: There's a footnote to this as
8 well. This is important because there FCRA obligations
9 on the part of the user in this. It's not something
10 that the FCRA can provide or furnish, but that the user
11 can use. And so these distinctions matter in terms of
12 both keeping a user from doing unintended wrong and from
13 establishing culpability for those might intend wrong.

14 MR. RAETHER: We talked earlier about
15 credentialing. I won't belabor the point, but if you're
16 not credentialed as a user to access the consumer
17 report, then the green section here that says
18 Collection-decisioning would be grayed-out. If you
19 clicked on it, it wouldn't do anything. A box would pop
20 up and it would say, You're not authorized for this,
21 call you call somebody, and it will pop you through.

22 THE COURT: Right.

23 MR. RAETHER: But this is the current
24 Accurint for collections. This is the launch -- the
25 equivalent to the launch page.

1 THE COURT: Okay.

2 MR. RAETHER: And as you can see, these are
3 the products that are being used today. This is the new
4 portal without the block of information in it so you can
5 actually see it in its entirety. But nothing new to
6 really point out there other than once I click on
7 collection-decisioning, anything within there, the next
8 thing the user sees is this screen. And what this
9 screen does is it requires the user to confirm that
10 they're in the right product, they're now in the
11 consumer-report product, and also to confirm that they
12 have a permissible use. So it's not only in the
13 contract, but it's also during the session that the user
14 has to confirm that they have an FCRA (Inaudible
15 portion.)

16 So the next one is the person-search
17 results. We've talked about this. This is the current
18 page of what Accurint looks like. And I guess what I
19 would note for you because I think it's important, it
20 was contentious, it was mentioned in Adams -- in the
21 decision. If you look at the middle left of the page
22 screen, there's a little gray box there and it says,
23 Includes bankruptcies. Do you see that?

24 THE COURT: Yes.

25 MR. RAETHER: If you check that, under the

1 current system if you ran a person search, you would
2 also get results that indicate whether that individual
3 is in bankruptcy or not. And our argument is the
4 compliance with the law and the automatic stay
5 provisions, but we debated as to whether or not that
6 would fall under person search. (Inaudible portion.)

7 MR. RAETHER: If you go to the next slide,
8 you'll see that we did eliminate the bankruptcy flag.

9 (Inaudible portion.)

10 THE COURT: All right.

11 Okay.

12 MR. BENNETT: LexisNexis sells a FCRA
13 product that's used and acknowledged as a necessary
14 product.

15 (Discussion off the record.)

16 MR. RAETHER: On the record, some of these
17 quickly because I think they'll be exemplary of what
18 we're doing, and we don't necessarily need to show you
19 every single screen that we've changed and how we've
20 changed it, although it's within the set of slides that
21 you're being given. In fact, I think the one that I
22 would like to focus on is the real property search.

23 THE COURT: Can I take it back,
24 unfortunately, for you. I'm sorry.

25 MR. RAETHER: I'm more considerate of your

1 time, Your Honor.

2 THE COURT: But no, that's fine.

3 Unfortunately, these folks know I sometimes I go late,
4 which I really do not intend to keep you here late
5 today. But the new -- where you're saying new Accurint
6 contact-and-locate person search results, it's -- where
7 it says collections-decisioning and the comprehensive
8 report and the balance sheet, all of those things that
9 if you click on them, it will be grayed-out if you're
10 not available. If you click on them, it doesn't really
11 matter whether you've checked because presumably, you're
12 allowed to use those for bankrupt purposes? Am I right
13 about that or not?

14 MR. RAETHER: You're right. So if you look
15 at the mask, it's more of a navigational guide. But
16 you'll see the blue where it says people, business,
17 phones, those are all blue, and that's telling the user
18 that this is not a consumer report.

19 Collection-decisioning is in green, and so
20 if the user was not credentialed for a consumer report,
21 that would be gray. If they were credentialed and they
22 clicked on collection-decisioning, then they would get
23 that pop-up that says, Do you have permissible use, and
24 they would then they are moving into the consumer report
25 product.

1 (Inaudible portion.)

2 THE COURT: Got it.

3 MR. RAETHER: That's the first -- just so
4 it's clear, that's the first time in the session.

5 THE COURT: Got it. Okay.

Now we can skip and choice ahead.

7 MR. RAETHER: So if you look, I think, three
8 slides ahead. It's the current Accurint for collections
9 real property search results.

10 THE COURT: Yes.

11 MR. RAETHER: And you'll see here that
12 what's disclosed is the sale amount, mortgage amount
13 under the property deed records, so that was at the date
14 the property was sold, not currently, but temporally
15 relating back to when it was sold.

16 THE COURT: Yes.

17 MR. RAETHER: What we've done is we've
18 reviewed -- if you look at the next page in the new
19 Accurint real property-locator search results, we've
20 removed that financial data.

21 THE COURT: The sale amount and the mortgage
22 amount.

23 MR. RAETHER: Well, we've removed them both.

THE COURT: Right.

25 MR. RAETHER: Both the sale and the mortgage

1 amount.

2 THE COURT: Okay.

3 MR. BENNETT: As well as the form of
4 ownership.

5 MR. RAETHER: (Inaudible portion.)

6 THE COURT: Right. Got it.

7 MR. RAETHER: If you look at --

8 THE COURT: This is just a practical
9 question because the way this prints out, it looks this
10 way. If somebody doesn't have access, this -- one of
11 these slides, which I think is the new Accurint
12 contact-and-locate real property search results. It's
13 one of your examples. It looks as if there are parts
14 that are shaded-out. Is that how it --

15 UNKNOWN SPEAKER: No, that's the mock-up.

16 THE COURT: Got it. Okay. Never mind.

17 MR. RAETHER: It may not look exactly like
18 this.

19 THE COURT: I would think it would not look
20 exactly like this.

21 MR. RAETHER: We are putting -- we didn't,
22 like, build the system because that's going to take 14-
23 to 20,000 hours to build. What we did is we took and
24 mocked it up.

25 THE COURT: You didn't think that my time

1 was worth it?

2 MR. RAETHER: Well, we did --

3 THE COURT: It's a joke.

4 MR. RAETHER: -- but when I asked people to
5 work over the holidays to make sure they got it done,
6 and they asked for something called overtime.

7 THE COURT: All right.

8 MR. RAETHER: I don't think anybody --

9 THE COURT: That's a different Federal
10 statute.

11 (Discussion off the record.)

12 MR. RAETHER: Well, we can talk about it. I
13 think that they all basically make the same point. They
14 both did, and if you went through each one, and you will
15 see, for example, in professional licenses --

16 MR. BENNETT: That's a good one. That was
17 the one that was some contention, too.

18 THE COURT: Okay.

19 MR. BENNETT: We were trying to figure out
20 where that line of gray came with us pushing back and
21 LexisNexis pushing the opposite direction, licenses was
22 one.

23 THE COURT: So what's the --

24 MR. BENNETT: Well, our view, generally, had
25 been it was not -- we looked at it from a creditor's

1 standpoint even though it's a collector. The fact that
2 somebody has an active pharmacist license or law license
3 or that type of thing might make them -- from where I'm
4 looking, and thus, the FCRA governs it. The flip side
5 is that there was extensive -- well, I don't want to
6 give you the very --

7 MR. RAETHER: Well, I think the best example
8 is knowing that the debtor is -- if they are a
9 pharmacist and you know the area in which they live,
10 they're trying to -- you have to realize that these are
11 people from the debt collectors perspective that are
12 avoiding trying to be located to pay the debt. So they
13 have to come up sometimes with creative ways. This
14 obviously isn't the first step in the process to try to
15 find the debtor. It's oftentimes the fifth, sixth or
16 seventh step because that person is trying to avoid
17 paying on a legitimate debt. And so with a pharmacist
18 or a nurse, the pharmacist in this particular example,
19 the idea is this person lives in Columbus, Ohio, you
20 have the general idea in what neighborhood he or she
21 lives in, he's a pharmacist, which means he probably
22 works for the Walgreen's or the CVS in the area. So the
23 debt collector may call the Walgreen's and CVS to see if
24 that person is employed there in an attempt to try to
25 locate.

1 MR. BENNETT: And at the end of that, we
2 were comfortable after some argument longer than this
3 discussion has taken, but I think we acceded to that.
4 It was one that makes a lot of sense, and our view was
5 more theoretical than -- as opposed to the practical
6 reality of the LexisNexis request.

7 THE COURT: So let me be sure I understand.
8 So you all this last line that says that somebody has an
9 inactive license and expiration date, that's all
10 information that the plaintiffs conceded should be
11 available on a locator; is that correct?

12 MR. RAETHER: If it's inactive, they won't
13 call CVS.

14 THE COURT: Right.

15 MR. BENNETT: That was active or inactive,
16 that was all right.

17 MR. RAETHER: Len and I spent a long time
18 fighting over that.

19 THE COURT: Right. Okay. All right.

20 MR. RAETHER: Again, quite frankly, we
21 created the collection-decisioning product, and so
22 there's a more robust product out there right now. If
23 they really want to make eligibility decisions, there's
24 a product that's going to have in aggregate all the data
25 they need to make that determination as opposed to this,

1 which is just one isolated piece of information. So
2 even assuming that it might somehow bear on eligibility,
3 they're not going to use this report and pay this money
4 to use it for that purpose because (Inaudible portion.).

5 THE COURT: Okay.

6 MR. RAETHER: What I wanted to do was shift
7 this line. It is Number 54.

8 (Discussion off the record.)

9 MR. RAETHER: This is really the summary of
10 everything we've agreed to in terms of changes.

11 THE COURT: Sure.

12 MR. RAETHER: So what you see is really
13 three categories. The first are data -- and this is
14 really organized to fit on one slide, but I'm not going
15 to go in the logical order. I'm going to go in the
16 Chinese, Hebrew order as opposed to the English order
17 and start from the right.

18 Because if you look at what we've done is
19 gone from skip-and-locate, which is contact-and-locate,
20 the non-consumer report product, are all of these data
21 sources that used to be available in Accurint for
22 collections, but these are sources that are being
23 eliminated.

24 Working counter-clockwise --

25 THE COURT: In this set of bullets, what

1 does subject information mean?

2 MR. RAETHER: The working --

3 THE COURT: The second bullet.

4 MR. RAETHER: That's a good question, and I
5 should know the answer, but I don't.

6 THE COURT: It doesn't make sense to me.

7 MR. RAETHER: I don't know.

8 THE COURT: It's gone.

9 MR. RAETHER: It's gone.

10 MR. BENNETT: It's not there.

11 MR. RAETHER: It's not there. I could make
12 something up, but I'm not going to.

13 THE COURT: Okay.

14 MR. RAETHER: I could use commonsense and
15 make something up, but I won't. I don't know off the
16 top of my head.

17 THE COURT: That's fine.

18 MR. RAETHER: So reduce availability in
19 skip-and-locate, these are the sources that we've
20 reduced the fields that are available. And then moving
21 up, no longer available to collections at all. So the
22 gone from skip-and-locate, those are fields and sources
23 that we've moved over to collections-decisioning.

24 The no-longer-available-to-collections,
25 we've eliminated mostly for -- because of contractual

1 reasons or others laws which restrict our ability to
2 make that information available for -- in consumer
3 reports. So the concession is we can't use this data
4 anymore --

5 THE COURT: Yes.

6 MR. RAETHER: -- for collections.

7 THE COURT: What is FL access?

8 MR. RAETHER: Florida. I know that one.
9 That's basically access that happened in
10 Florida. It's the only state that publically makes
11 available access to that information.

12 THE COURT: Okay.

13 MR. BENNETT: The driver -- Privacy
14 Protection Act sort of overlays --

15 MR. RAETHER: The driver's Privacy
16 Protection Act, although those certifications would
17 still be included with that contact-and-locate file.
18 There are permissible purposes under the PPA that allow
19 collection --

20 MR. BENNETT: (Inaudible portion.) You see
21 some reference to them, which is another statute that
22 governs Consumer Privacy, but they have already taken --
23 LexisNexis rather has already taken a fairly aggressive
24 or solid privacy approach for those statutes.

25 THE COURT: Okay.

1 MR. RAETHER: But I think the main point,
2 Your Honor, to make is that -- this is a resolve to
3 negotiations, a compromise. It wasn't as though we just
4 threw something together. We actually looked at the
5 issues that were being raised by plaintiffs and
6 plaintiffs' counsel, had discussions to make compromise
7 in order to put together a suite of products and
8 services that meet that commonsense test that you
9 articulated earlier.

10 THE COURT: Okay.

11 MR. RAETHER: So with respect to the
12 contact-and-locate, I think one of -- it might have been
13 Jim mentioned that -- it was Mike actually, that the
14 contact-and-locate is not a consumer report, so it's not
15 subject to all of the requirements of the Fair Credit
16 Reporting Act. We did look at the issues that were
17 being raised by plaintiffs in their experiences and
18 decided upon through negotiations of practices that we
19 would agree to as part of the injunctive relief. So
20 otherwise, we wouldn't be legally obligated to provide
21 these to consumers, but in order to address the issues
22 that were being raised in the complaint, we agreed upon
23 these --

24 THE COURT: Okay.

25 MR. RAETHER: -- additional concessions as

1 part of the injunctive relief. And the first one is
2 that a consumer is able to contact LexisNexis and
3 request a free copy of their contact-and-locate
4 comprehensive report. So that will enable the consumer
5 to know what's being reported about them in
6 contact-and-locate. With respect to
7 collections-decisioning, they already have that right
8 under the Fair Credit Reporting Act. So there's no
9 reason to be redundant. The other one was to allow the
10 consumers to submit a 100-word statement with respect to
11 a phone number or an address. And really, there what
12 we're talking about is trying to address the actual
13 issue at hand. So what we were hearing from plaintiffs'
14 counsel was that consumers were getting calls about
15 debts that didn't belong to them. And it could be
16 because their phone number was showing up on the actual
17 debtor's report, and so a collection agency was looking
18 at debtor's report, calling this number, and the person
19 answering the phone say, I'm not the Graham that owes
20 this debt. And so just allowing the consumer to come in
21 and dispute that and fix their report really wouldn't
22 cure the issue because the phone number is showing up on
23 someone else's report. Likewise, the other scenario --
24 I'm not sure if any of the named plaintiffs encountered
25 it that we've heard about -- is getting a call about a

1 relative that owes a debt. And that's a technique that
2 is used by debt collectors. I don't know FTCPA, there
3 might issues there. But being able to say -- so how do
4 you communicate to the debt collector that I haven't
5 seen my brother in ten years, so stop calling me about
6 my brother's debt. The traditional FCRA dispute
7 mechanisms wouldn't address that issue. So I think we
8 came up with something not only that is innovative
9 because no one else is doing it, but more importantly
10 addresses the concerns and the issues raised by the
11 plaintiffs, and that's allowing the consumer to call in
12 and submit a 100-word statement with regard to a
13 specific telephone number or with regard to a specific
14 address. So the consumer -- it obviously has to deal
15 with the accuracy of that information. I can't just
16 call in and say -- put something random like what might
17 show up on the internet. It has to actually relate to,
18 This number does not belong to Ron Raether that lives at
19 such-and-such address. But the idea is to give debt
20 collectors a means by which to be more efficient in what
21 they do, but also to help consumers.

22 THE COURT: So if somebody calls up and
23 says, I'm getting a call about my brother, then you bear
24 the burden of figuring out where that appears in your
25 computer system?

1 MR. RAETHER: What we would do -- they would
2 call up and say, Number 804-555-1234, that does not
3 belong to Ron Raether who lives at such-and-such
4 address. And what we would do is go into our system and
5 figure out everywhere that number appears, and when --
6 I'll show you in a minute how it actually will work.
7 What the user will do is they can click on a list, they
8 can search by that number, and when they search by that
9 number, it will tell them the comments that go along
10 with that number.

11 THE COURT: Okay.

12 MR. RAETHER: But that will be available in
13 those places where the collections agency user is
14 accessing that data.

15 THE COURT: You guys came up with that?

16 That's the change?

17 MR. RAETHER: We're hoping that it will give
18 us a competitive advantage.

19 MR. BENNETT: The 100-words -- even though
20 the parties are agreeing that the contact-and-locate is
21 not covered by the FCRA, that 100-word statement is
22 modeled after the Fair Credit Reporting Act.

23 THE COURT: Right.

24 MR. BENNETT: But the problem is just as he
25 explained is the relational database, they don't

1 maintain data by name because -- (Inaudible portion.)

2 THE COURT: Right.

3 MR. BENNETT: You understand.

4 MR. RAETHER: He is right. There are
5 technical reasons as well for why we came up with this
6 solution, but I think, practically, it more directly
7 addresses the concerns raised by the plaintiffs.

8 THE COURT: All right.

9 MR. RAETHER: And there will be a link, and
10 this will appear everywhere on the homepage as well as
11 the search pages, the consumer comments. And, again,
12 this is just a mock-up. It isn't actually how it might
13 look, but it's based in concept. (Inaudible portion.)

14 THE COURT: (Reviewing documents.)

15 MR. RAETHER: If we can go to the next
16 slide. What you'll see here is sort of a mesh of steps
17 because, again, we're just mocking this up. But the
18 user would put in a phone number and an address and
19 click search. The search results would come up and it
20 would show all of the comments that are relative to that
21 phone number --

22 THE COURT: Yes.

23 MR. RAETHER: -- or are relative to that
24 address.

25 In the next screen, the purple (Inaudible

1 portion.)

2 And then the other thing that LexisNexis is
3 agreeing to do under the settlement is a series of
4 training and educational events, both with regard to
5 consumers as well -- I mean, with regard to customers,
6 as well as with regard to employees about different
7 products, what is permitted and what is prohibited and
8 how they work.

9 THE COURT: Are you all negotiating in sort
10 of the nature of those training, is that among the
11 things that you're drilling down on or is that
12 something --

13 MR. BENNETT: It is one of the things that
14 we have to drill down on in the settlement agreement.
15 It won't be such that we could provide the PowerPoints
16 and the training materials --

17 THE COURT: Right.

18 MR. BENNETT: We are -- I understand
19 Mr. Francis, who has a computer discount --

20 MR. FRANCIS: Contract.

21 MR. BENNETT: -- contract.

22 As we get to the end of that, I would -- the
23 hugest of the injunctive relief is only by application,
24 not in this PowerPoint, which is all of the
25 credit-decisioning category of reports that -- it's the

1 ability of the consumer, as Mr. Francis already
2 highlighted --

3 THE COURT: Right.

4 MR. BENNETT: -- to make dispute as to the
5 accuracy of the information.

6 MR. RAETHER: So on the
7 collection-decisioning, obviously, the Fair Credit
8 Reporting Act requirement. (Inaudible portion.)

9 MR. BENNETT: Find out whose obtained your
10 report.

11 THE COURT: And so how will a consumer do
12 that?

13 MR. RAETHER: I --

14 THE COURT: Presumably, they're not your
15 customer, right?

16 MR. RAETHER: And so there will be --

17 THE COURT: So they won't be on these screen
18 shots, correct?

19 MR. RAETHER: Well, we're talking about two
20 different products.

21 THE COURT: Right. I know.

22 MR. RAETHER: But it's the one that
23 collection-decisioning that's Fair Credit Reporting Act.
24 On the contact-and-locate, there will be -- we're still
25 in the midst of negotiating and putting together, but

1 there will be a communication plan that goes along with
2 educating and notifying consumers how they submit
3 (Inaudible portion.)

4 With respect to the collection-decisioning,
5 there's a series of requirements that comes under the
6 FCRA about how to publicize the consumers, the
7 availability of certain --

8 THE COURT: Right.

9 MR. RAETHER: -- rights or resources. So
10 there will be a web page, there will be all of the
11 things that you normally see that a consumer reporting
12 agency does that inform the consumers about how they can
13 exercise their rights.

14 MR. BENNETT: And while the defendant has
15 structured different corporate entities to serve
16 different roles as a family -- or as (Inaudible
17 portion.) would say it's a singular reporting agency --
18 LexisNexis has a very long and deep history of FCRA
19 compliance. The employment reports that were the
20 subject of Williams, primary insurance product for
21 insurance underwriting is now a LexisNexis product, and
22 there are a number of -- the Banco that I jokingly made
23 about the bankruptcy system, it's a necessary product,
24 so that the categorization is as critical -- or is the
25 most critical component of the implementation. Once the

1 products have either the category of collection,
2 Accurint, it's treated as a FCRA-governed product that
3 pushes it into a family expertise that (Inaudible
4 portion.)

5 MR. RAETHER: It really resolves the
6 issue -- (Inaudible portion.)

7 THE COURT: Right.

8 MR. RAETHER: -- as if there are other parts
9 of the business that are already know how to comply with
10 the Fair Credit Reporting Act.

11 THE COURT: Right. I'm asking that question
12 to see if there's any potential disputes about how
13 that's going to happen. But it sounds as if you already
14 have a system that the plaintiffs recognize is working
15 and viable and a compliant systems, that's not a list of
16 things that you're going to be discussing down the way
17 necessarily.

18 MR. BENNETT: As working and viable and
19 compliant as any consumer report.

20 MR. RAETHER: Well, a lot better than some.

21 (Discussion off the record.)

22 MR. RAETHER: The last thing I want to deal
23 with, Your Honor, is just so that you understand the
24 timing elements. I talked earlier about the amount of
25 effort that is going to be required in order to

1 implement this injunctive relief, and they're really
2 listed here in categories. So the engineering costs,
3 sales, this was the announcement to the market letting
4 them know that those new products are coming, probably
5 the most time-intensive as well as costly endeavor will
6 be to credential --

7 THE COURT: Right.

8 MR. RAETHER: -- all of existing customers.
9 So there is a mandated credentialing process under the
10 FCRA so that if we're going to allow these customers
11 access to collection-decisioning, we're going to have to
12 put them through that credentialing process, which can
13 include up to a site visit.

14 THE COURT: Okay.

15 MR. RAETHER: But, I think, this is really
16 context for the timeline of implementation that we've
17 talked about. And so what you're looking at here is the
18 current proposal with regard to the timeline for
19 implementation, and this has -- I can't remember if Len
20 said it here, or it might have been Mike. We're really
21 talking about an ocean liner, a huge ship, that we're
22 moving, and we're developing a product from scratch,
23 which takes time, and so we're looking at the end of
24 this year for releasing the product. And, of course,
25 those are end of dates, right. We're going to wait

1 until December 31st. This is we're going to get it done
2 by then.

3 THE COURT: Yes.

4 MR. RAETHER: Same thing with -- obviously,
5 we can't offer a product to customers until it's
6 available and out there, so new customers will
7 immediately be put on the new product as well as we'll
8 begin to migrate existing customers over to those new
9 products. And once we have contact-and-locate out
10 there, obviously we'll make the consumer access program
11 rights available immediately upon release of that
12 product.

13 So we're going to have a period in which we
14 have to migrate customers. I think the last count I had
15 was somewhere around 10,000 customers that are going to
16 need to be migrated over. I think the number is 6 or
17 7,000 customers that will need to be credentialed. So
18 we have users and customers that will need trained or
19 will need to be moved over on paper, the contracts. All
20 of those things will happen, but they will be done by
21 December 31st, 2014. Those are for the on-line
22 customers. We also have customers that have their own
23 internal computer systems that they, themselves, have to
24 design and develop and retool in order to work with
25 Accurint. And so we have to get on their calendars and

1 say, You need to do development if you're going to
2 continue to use our products. You're going to have to
3 do development of your own software, of your own systems
4 in order to be able to handshake with our system to get
5 the data. So that's really -- normally, companies start
6 doing that in the fall for the next year. So if we're
7 talking about approval sometime in the second or third
8 quarter of this year, that means we're going to those
9 customers and getting on their development calendars so
10 that we can be in compliance by June 30th, 2013 --
11 (Inaudible portion.)

12 THE COURT: Yes.

13 MR. RAETHER: Obviously, we're doing
14 everything we can, even now, to start working on
15 complying with these deadlines in the settlement
16 agreement. If we need relief from any of these dates,
17 we have to come to Court and request that in a show
18 cause. And then finally, the sunset date, which we
19 talked about earlier is going to be either seven years
20 from effective date, but at least until June 30th, 2020.
21 And part of that timing, Your Honor, was to take into
22 account this timetable for implementation.

23 THE COURT: Okay.

24 MR. RAETHER: That's the end of my
25 presentation. I can go back and go into more detail

1 about specifics of some of the reports if you want.

2 THE COURT: No, this is -- certainly, having
3 the information in advance is extremely helpful. It
4 sort of allows me to place this in context, so
5 obviously, you all have worked very hard on this.

6 And my one sort of logistical question
7 before we sort of close, which I promise, we will, is
8 with respect to this information, I'll tell you I don't
9 see right here any sort of red flags. I want to be sure
10 that I review it and think hard about it.

11 With the explanations that you have, I've
12 sort of raised the issues that I think would likely come
13 up, that a Judge is always going to look at these
14 issues, which is why I asked about it. I think any
15 Judge whose is going to sort of put this in a context of
16 a recent decision by the Fourth Circuit, and I think not
17 necessarily completely comparable circumstance, but you
18 all, I think, will have to be able to present that in a
19 way that's easily absorbed and collected for
20 Judge Spencer.

21 I don't like the word decisioning. I feel
22 absolutely certain that Judge Spencer will not care less
23 one way or the other. So don't take that as feedback.
24 But I just really can't stand it. So I'm just going to
25 say it again.

1 So the question that I would have is about
2 sort of how this potential timetable as to your business
3 needs fits into what the Court timetable would be for
4 preliminary approval on other issues. I think you have
5 a date with Judge Spencer this month on the books. Am I
6 right? You have something?

7 (Iaudible portion.)

8 THE COURT: Right. Obviously, he needs to
9 know that. But I'll help sort of communicate those
10 issues, but I think it's still on his books.

11 MR. BENNETT: (Inaudible portion.)

12 But we would like to get those to you as
13 well.

14 THE COURT: You mean the actual settlement
15 documents?

16 MR. BENNETT: Yes, Your Honor.

17 THE COURT: Right.

18 Those are the key.

19 MR. BENNETT: The injunctive relief order
20 would be more substantial than an ordinary judgment
21 order.

22 THE COURT: Right.

23 MR. BENNETT: One of the things is -- and
24 we're cognizant of the burden that we've put on this
25 Court, and we respect that Your Honor doesn't mind that

1 burden, but it's a burden. And we are motivated to
2 within fairness and following the Court rules, but still
3 to minimize the burden on the Court -- we're all
4 believers in the settlement, but that's not surprising.
5 We recognize that the rest of the world, the class
6 members, will want to have a voice or are entitled to.
7 I'm lucky in my career to not have been the subject of
8 any objectors in my cases, but that's possible.

9 Still, one of the questions that we have
10 lingered -- or has gone back and forth, we caught this
11 privately or away from here is what can we ask from the
12 Court -- what can we ask from Your Honor to help in our
13 objective of fairly reducing Judge Spencer's work? So
14 for example, we could have just said, Judge, we have it
15 settled. Thank you. We're going to file papers with
16 Judge Spencer. Our view is that you will be as rigorous
17 as Judge Spencer would be, and thus, you have
18 significant experience with that, obviously. And so our
19 question is what can we do and within a proper posture,
20 and the reason we kept things from being ex parte is to
21 help with the process of reducing judicial burden.

22 THE COURT: Right. Well, I'll tell you that
23 one thing that would help me give you a more firm answer
24 about that, perhaps, is your giving me a more firm sense
25 of timing of when things would be coming to the Court.

1 I won't hide to you that what I will do is talk
2 procedure to Judge Spencer. He can refer to me anything
3 he wants to or not, but he's the decisioning person
4 there. I'm sorry, I'll stop.

5 (Discussion off the record.)

6 THE COURT: But if you give me a sense of
7 timing, then I can talk to him, and I mean by
8 preliminary approval, when settlement -- and you don't
9 have to give it to me right now. This might be a good
10 time for all of us to take a moment, you all to caucus,
11 figure out sort of what you think when the settlement
12 documents will really, really be finished. And I will
13 say it will be helpful not to say we can do it in 30
14 days and have it really be 60. If I'm engaging
15 Judge Spencer in a timing issue that's significantly
16 more awkward for me to deal with him with lots of
17 changes than it would be if it's just us.

18 MR. BENNETT: (Inaudible portion.) But we
19 actually have a draft settlement agreement that's being
20 exchanged.

21 THE COURT: Okay.

22 MR. BENNETT: On our side, we have started
23 working on the -- what we think is more complex
24 injunctive relief order, and that will -- that expresses
25 all that you've seen here.

THE COURT: Right, which strikes me as no small feat, I mean, getting that written down.

3 MR. BENNETT: Right, right.

4 (Inaudible portion.)

5 THE COURT: Well, also everybody is not
6 available on a dime.

7 (Inaudible portion.)

8 (Discussion off the record.)

9 MR. BENNETT: It would be fair even if we
10 say -- I mean, I think the belief is that it's 30 days.

11 THE COURT: 30 days for submitting
12 settlement --

13 MR. BENNETT: Submitting --

14 THE COURT: -- and the potential injunctive
15 relief.

16 MR. CADDELL: Why don't we say by the end of
17 February? End of February, that's 45 days. That would
18 be preliminary approval motion, we've got to have a form
19 of notice for the (b) (3) class. We need to flesh out
20 the notice program for the (b) (2) --

21 MR. BENNETT: Which is pretty far along
22 already.

23 MR. CADDELL: Right.

24 MR. BENNETT: Right. That in --

25 (Discussion off the record.)

1 THE COURT: All right. Well, that's
2 important information for me to have. And then what I
3 would like is just an opportunity to make sure I sit on
4 this, remember what I forgot to ask you about. I'm a
5 chart person; I think I've reviewed all the charts that
6 were ably prepared on my behalf. Obviously, you all
7 have been working on this. I think that's reflected in
8 the documents that you're presenting.

9 This does strike me -- you know, my gut
10 commonsense response is this strikes me as a fair
11 settlement, and ultimately, that's where these things
12 go. But you have a lot of steps to talk about along the
13 way. And so there's nothing other than what I've
14 already asked you about that gives me any pause or
15 concern.

16 So why don't you let me be sure that I have
17 some time to speak with Judge Spencer, see what his
18 procedural preference is, and then maybe we can have a
19 conference call so that you can know that before the end
20 of February and then prepare your documents accordingly.

21 All right.

22 MR. McCABE: And, Your Honor, obviously, if
23 you have any questions, if upon reflection, there are
24 other things, we are more than happy to come back.

25 THE COURT: Right.

1 MR. CADDELL: We're happy to do whatever the
2 Court wants to feel comfortable, that you have
3 thoroughly reviewed everything vetted in (Inaudible
4 portion.)

5 I think since the (b) (2) settlement does not
6 require formal notice, but we will be doing program --
7 since the (b) (3) settlement will be direct mail notice
8 to 31,000 people, I would anticipate the notice campaign
9 to be about 60-day period after preliminary approval.
10 So it could move pretty quickly. We're not talking
11 about millions of people to get direct notice and then
12 have to make claims and things like that.

13 THE COURT: Right.

14 MR. CADDELL: You could actually -- if we
15 got preliminary approval in early March, you could look
16 at a fairness hearing in May, for example, or something
17 like that.

18 MR. BENNETT: 90 days.

19 MR. CADDELL: Okay.

20 (Discussion off the record.)

21 THE COURT: In all of that, you all are
22 talking about your implementation procedures, but you
23 see this as a dual-track process, right? So it's not as
24 if you're saying that December 31st is when this begins?

25 UNKNOWN SPEAKER: Judge, there is work

1 underway right now.

2 THE COURT: Right.

3 (Inaudible portion.)

4 THE COURT: Okay. So that's part of my
5 question, is there will be a period of time where you
6 will have some folks using Accurint and some people
7 operating -- or at least beginning to operate under a
8 new contractual basis for the --

9 UNKNOWN SPEAKER: And that will commence
10 before the end of December.

11 (Inaudible portion.)

12 THE COURT: Well --

13 MR. CADDELL: And obviously Len can speak
14 for us.

15 THE COURT: I never do things by phone call.
16 You guys know that.

17 Well, that's -- I appreciate that.

18 Really, this has not been overly burdensome.
19 I see it as my opportunity and job to have this process
20 go as smoothly as possible for you all and for
21 Judge Spencer. So to the extent I can review things and
22 make sure I understand them, and then whatever -- he's
23 obviously going to go through the process independently,
24 but to the extent that there are any issues that you can
25 work out where he doesn't have to mire in any of the

1 details, I have no problem with that at all. So I'll do
2 as much or as little of that as he's comfortable with.
3 And the same would be true with you all. I don't feel a
4 need to -- I mean, it's actually great to see you all.
5 I feel as if I've heard and read about you and talked to
6 you enough times that it's actually good to put faces to
7 the names, and I appreciate your taking the opportunity
8 to come here because I like it better. I think it's a
9 more interesting process, and I can tell you personally
10 that I think you all have worked something out that is
11 very difficult. I do think it is a sea change and a
12 good one and a thoughtfully conducted one. On behalf of
13 sets of individuals involved, this does strike me both
14 as a set of circumstances where you all have worked hard
15 to see what's fair, to give up on some things you may
16 not wish to have given up on, but then also sort of
17 seeing the horizon, the commonsensible approach that's
18 going to have to come at one point or another, and it
19 would not be exactly what everybody wants. And so I
20 think you've worked very hard, and it's evident in what
21 you're presenting to me, and I think it will be quite
22 evident to Judge Spencer, too. So I appreciate your
23 allowing me to say that to you personally, but also sort
24 give-and-take. That is a better one for me as a member
25 of the Court system.

1 (Inaudible portion.)

THE COURT: Well, I'm happy to do that.

3 Also, I'm happy that you all are patient that I actually
4 take time to read through things. As you know, any
5 month is already booked up through June for now for me.
6 I'm sure for you all, too. And so the changes need for
7 you all to build in the time to allow Lorie Ann work to
8 death in between and then me do a little work afterward.
9 So it's a give-and-take that, I think, is helpful to all
10 of us. So I appreciate it.

11 MR. CADDELL: Thank you, Your Honor.

12 THE COURT: Thank you.

13 I think we're done. Do you all think so,
14 too?

15 MR. CADDELL: Yes, Your Honor.

16 Thank you.

17 THE LAW CLERK: All rise.

18 This Court stands in recess.

19 (Proceedings concluded at 5:35 p.m.)

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1 CERTIFICATE OF COURT REPORTER
23 I, Donna K. Soutter, do hereby certify that
4 I transcribed a recording provided by Consumer
5 Litigations Associates, P.C., of the proceedings heard
6 in the United States Court for the Eastern District of
7 Virginia, in the captioned cause, heard by the
8 Honorable M. Hannah Lauck, Judge of said Court, on
9 Monday, January 14th, 2013.10 I further certify that the foregoing
11 transcript of said proceedings constitutes a true,
12 accurate, and complete transcript of said proceedings to
13 the best of my knowledge and ability.14 Given under my hand and notarial seal at
15 Culpeper, Virginia, this 14th day of February, 2013.

16

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18 / s /

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20 -----
21 Donna K. Soutter,

22 Notary Public No. 357093

23 Commonwealth of Virginia at Large

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\$	2008 [3] - 24:18, 85:10, 86:2 2009 [1] - 33:10 2010 [1] - 27:15 2012 [1] - 102:25 2013 [4] - 1:17, 129:10, 140:9, 140:15 2014 [1] - 128:21 2020 [1] - 129:20 215 [1] - 2:16 21st [1] - 27:10 22314 [1] - 3:14 227-3700 [1] - 4:24 23(b)(3) [1] - 63:10 23(c) [1] - 104:11 23(e) [2] - 102:6, 103:7 23(f) [3] - 17:13, 41:13, 62:16 23(f) [1] - 62:18 23219 [1] - 4:8 23601 [2] - 2:7, 3:21 23803-3212 [1] - 3:6 25 [2] - 57:3, 57:10 268-7011 [1] - 4:16 273-7770 [1] - 3:15 2:00 [1] - 1:18 2:17 [1] - 5:2	53:25, 91:9 5-and-a-half [2] - 50:7, 50:14 5.5 [1] - 52:18 50 [2] - 75:18, 75:21 500 [1] - 4:21 54 [1] - 115:7 5:35 [1] - 139:19	ability [4] - 52:7, 117:1, 124:1, 140:13 able [21] - 29:12, 29:15, 38:2, 38:7, 38:10, 41:12, 55:3, 55:6, 66:13, 69:3, 70:3, 73:4, 89:25, 90:5, 90:9, 103:3, 103:8, 119:2, 120:3, 129:4, 130:18 ably [1] - 135:6 absent [1] - 49:2 absolutely [1] - 130:22 absorbed [1] - 130:19 acceded [1] - 114:3 accept [2] - 28:17, 49:11 access [9] - 45:20, 105:10, 106:16, 111:10, 117:7, 117:9, 117:11, 127:11, 128:10 accessing [1] - 121:14 accomplish [1] - 48:4 accomplished [4] - 42:3, 90:2, 90:20, 100:12 accordingly [2] - 76:17, 135:20 account [6] - 24:11, 71:15, 74:16, 77:24, 86:20, 129:22 accounts [3] - 82:15, 82:18, 83:7 accuracy [8] - 38:12, 54:10, 54:12, 54:15, 55:2, 93:3, 120:15, 124:5 accurate [4] - 19:15, 28:19, 89:9, 140:12 accurint [1] - 74:24 Accurint [68] - 15:1, 17:3, 17:20, 18:13, 24:22, 25:3, 29:21, 30:9, 36:10, 36:14, 37:1, 37:3, 37:5, 37:7, 37:20, 37:22, 38:8, 42:6, 42:7, 43:15, 44:14, 45:2, 54:21, 65:3, 65:19, 66:23, 67:25, 68:3, 68:12, 69:9, 73:23, 74:15, 74:25, 75:21, 76:11, 76:13, 76:15, 76:17, 77:2, 79:1, 82:9, 82:18, 82:22, 82:23, 83:15, 83:18, 83:21, 83:22, 83:24, 86:7, 86:16, 86:20,	88:18, 89:2, 91:16, 92:16, 92:17, 106:24, 107:18, 109:5, 110:8, 110:19, 111:11, 115:21, 126:2, 128:25, 137:6 accustomed [1] - 91:16 achieve [5] - 34:10, 34:12, 40:9, 40:10, 41:12 achieved [1] - 41:19 acknowledged [1] - 108:13 acknowledgement [2] - 49:15, 103:5 acquired [1] - 29:20 Act [33] - 7:7, 7:14, 12:24, 15:20, 16:9, 16:10, 16:23, 17:23, 20:16, 20:21, 25:23, 28:23, 38:10, 40:15, 53:16, 57:14, 67:18, 76:17, 82:12, 82:14, 94:9, 94:11, 95:1, 99:23, 103:20, 117:14, 117:16, 118:16, 119:8, 121:22, 124:8, 124:23, 126:10 act [1] - 55:2 Action [1] - 5:8 action [7] - 7:12, 15:23, 51:14, 55:13, 66:4, 100:3, 101:16 actions [1] - 59:6 active [3] - 65:15, 113:2, 114:15 actively [1] - 67:25 actor [1] - 67:7 actors [1] - 67:11 acts [1] - 56:7 actual [10] - 14:25, 24:8, 43:10, 44:12, 44:13, 44:16, 66:9, 119:12, 119:16, 131:14 ad [1] - 47:8 Adams [20] - 17:19, 18:15, 18:22, 21:23, 23:17, 23:19, 24:18, 24:19, 24:20, 24:21, 35:19, 54:20, 55:14, 70:24, 70:25, 84:18, 85:23, 92:15, 107:20 Adams' [1] - 54:18 add [2] - 9:12, 46:14 add-ons [1] - 46:14 addition [2] - 52:9,
1	1	6		
1	2	7		
2	3	8		
3	4	9		
4	5	A		
5		abbreviated [1] - 7:4 abductions [1] - 75:5 abductors [1] - 75:6		

82:13 additional [2] - 99:8, 118:25 Address [1] - 30:17 address [27] - 17:15, 20:6, 20:9, 22:11, 34:14, 35:7, 35:13, 39:19, 48:12, 57:18, 59:16, 72:25, 74:11, 79:16, 80:12, 91:7, 97:18, 104:25, 118:21, 119:11, 119:12, 120:7, 120:14, 120:19, 121:4, 122:18, 122:24 addressed [4] - 17:9, 34:8, 35:6, 91:24 addresses [6] - 19:20, 32:11, 57:20, 75:19, 120:10, 122:7 addressing [2] - 36:13, 90:14 adequacy [3] - 63:6, 63:8, 64:21 adequate [2] - 33:21, 64:15 administration [2] - 59:12, 60:25 admit [3] - 95:21, 95:22, 96:2 admitted [1] - 16:8 admittedly [1] - 15:19 adopts [1] - 67:16 adults [1] - 44:8 advance [1] - 130:3 advanced [1] - 88:8 advantage [2] - 8:11, 121:18 advantages [1] - 11:23 adverse [1] - 38:17 advertise [1] - 29:8 advertisements [1] - 43:24 advice [1] - 73:17 advised [2] - 21:7, 82:20 advocates [1] - 56:5 advocating [1] - 87:7 affect [2] - 44:18, 44:19 affected [1] - 15:23 afforded [2] - 40:14, 103:25 afraid [2] - 41:10, 41:16 afternoon [7] - 11:10, 12:13, 12:20, 64:7, 64:8, 89:16, 89:17	Age [1] - 30:20 agencies [14] - 69:14, 75:2, 81:13, 82:13, 82:17, 84:7, 86:8, 86:9, 86:15, 86:19, 86:21, 89:3, 92:14 agency [7] - 51:17, 71:24, 94:3, 119:17, 121:13, 125:12, 125:17 agenda [1] - 6:9 aggregate [1] - 114:24 aggregation [1] - 75:14 aggressive [1] - 117:23 ago [3] - 33:7, 34:17, 40:17 agree [6] - 9:13, 26:2, 52:17, 54:13, 98:18, 118:19 agreed [22] - 8:8, 10:14, 16:13, 21:1, 23:7, 34:17, 36:12, 36:22, 48:21, 50:3, 50:4, 50:7, 56:25, 57:2, 57:23, 59:9, 59:13, 64:15, 96:17, 100:17, 115:10, 118:22 agreeing [7] - 48:4, 78:7, 93:9, 93:12, 93:14, 121:20, 123:3 agreement [18] - 7:2, 9:13, 10:13, 13:12, 22:21, 23:8, 42:14, 45:5, 45:18, 46:18, 46:22, 47:1, 56:25, 57:4, 96:25, 123:14, 129:16, 133:19 agrees [2] - 45:1, 64:14 ahead [2] - 110:6, 110:8 airplane [2] - 81:18 al [4] - 1:5, 1:11, 5:9, 5:10 Alaska [1] - 97:10 alert [1] - 45:15 Alexandria [1] - 3:14 allege [5] - 36:6, 36:8, 42:7, 42:9, 44:12 alleged [1] - 67:1 ALLEN [1] - 2:19 allow [6] - 98:24, 102:1, 117:18, 119:9, 127:10, 139:7 allowed [1] - 109:12 allowing [4] - 102:20, 119:20, 120:11,	138:23 allows [4] - 74:2, 81:21, 101:25, 130:4 alluded [1] - 54:17 allusions [1] - 14:24 almost [4] - 31:3, 42:2, 99:5, 99:6 altogether [1] - 76:5 ambiguity [1] - 69:1 ambiguous [1] - 88:20 amenable [1] - 66:1 amendment [1] - 102:23 amendments [1] - 70:1 amount [10] - 50:17, 76:1, 79:21, 101:22, 110:12, 110:21, 110:22, 111:1, 126:24 amounts [1] - 21:5 analysis [2] - 22:23, 67:20 ANALYTICS [1] - 1:9 analyze [1] - 102:6 anecdote [1] - 74:5 Ann [1] - 139:7 announcement [1] - 127:3 answer [5] - 21:17, 48:8, 68:12, 116:5, 132:23 answering [1] - 119:19 answers [1] - 52:8 antecedent [1] - 68:22 ANTHONY [10] - 2:3, 4:3, 6:10, 7:20, 9:17, 9:25, 11:15, 11:19, 12:1, 104:8 Anthony [9] - 5:13, 6:10, 6:25, 39:22, 39:23, 48:10, 49:10, 104:4, 104:7 Anthony's [1] - 103:3 anticipate [3] - 5:20, 45:22, 136:8 apart [1] - 87:3 Appeal [3] - 17:13, 41:13, 68:10 appear [2] - 41:22, 122:10 appeared [2] - 18:22, 28:15 application [3] - 68:11, 73:19, 123:23 applications [4] - 70:8, 70:9, 75:11 applied [2] - 69:9, 88:4	applies [1] - 73:19 apply [5] - 46:12, 62:14, 65:20, 87:20, 96:9 applying [2] - 95:8, 95:9 appreciate [10] - 13:16, 37:4, 43:3, 47:11, 88:11, 95:23, 137:17, 138:7, 138:22, 139:10 appreciated [3] - 16:1, 16:5, 17:6 approach [5] - 32:24, 33:3, 90:12, 117:24, 138:17 appropriate [9] - 12:8, 17:9, 17:15, 21:20, 22:12, 23:2, 41:10, 59:19, 98:16 appropriately [1] - 29:3 approval [14] - 8:25, 43:17, 59:17, 61:14, 89:8, 101:24, 101:25, 102:13, 129:7, 131:4, 133:8, 134:18, 136:9, 136:15 approve [1] - 11:3 approved [4] - 74:14, 83:9, 101:7, 102:7 April [1] - 41:15 area [7] - 12:25, 14:2, 45:10, 48:6, 49:2, 113:9, 113:22 areas [1] - 20:20 argue [2] - 42:19, 52:15 argued [2] - 24:22, 48:5 arguing [1] - 7:9 argument [10] - 27:2, 29:24, 31:3, 49:1, 49:3, 49:6, 51:14, 70:13, 108:3, 114:2 arguments [1] - 48:15 ARTHUR [1] - 2:10 articulate [1] - 40:2 articulated [2] - 62:2, 118:9 aside [3] - 64:12, 90:3, 101:2 aspects [1] - 8:4 assert [3] - 48:25, 49:1, 66:6 asserts [1] - 68:5 assess [1] - 72:10 asset [1] - 72:7 assets [1] - 13:19
---	---	--	--

B	belief [3] - 37:12, 63:7, 134:10 believers [1] - 132:4 belong [3] - 119:15, 120:18, 121:3 benefit [13] - 35:17, 36:4, 53:9, 53:11, 53:16, 54:5, 54:17, 55:24, 90:6, 103:18, 103:23 benefits [2] - 89:7, 103:18 BENNETT [71] - 2:3, 5:16, 5:21, 6:24, 8:23, 10:11, 11:2, 11:23, 12:2, 12:11, 12:15, 22:3, 23:9, 26:14, 26:25, 27:5, 39:7, 41:22, 47:16, 47:24, 49:19, 49:24, 50:23, 51:5, 52:24, 56:2, 58:21, 61:10, 63:1, 81:24, 88:24, 94:2, 94:13, 94:23, 97:2, 99:3, 101:17, 104:4, 106:7, 108:12, 111:3, 112:16, 112:19, 112:24, 114:1, 114:15, 116:10, 117:13, 117:20, 121:19, 121:24, 122:3, 123:13, 123:18, 123:21, 124:4, 124:9, 125:14, 126:18, 131:11, 131:16, 131:19, 131:23, 133:18, 133:22, 134:3, 134:9, 134:13, 134:21, 134:24, 136:18 Bennett [13] - 5:11, 17:24, 33:8, 33:12, 39:23, 41:12, 48:10, 48:14, 57:3, 57:5, 79:6, 79:7, 106:4 bENNETT [1] - 23:1 BERRY [1] - 1:4 Berry [7] - 5:9, 18:16, 21:12, 23:24, 24:17, 36:6 best [8] - 21:18, 30:14, 40:17, 41:23, 48:6, 57:21, 113:7, 140:13 better [8] - 31:11, 40:11, 40:13, 41:18, 41:20, 126:20, 138:8, 138:24 between [5] - 33:16,	34:9, 35:15, 79:20, 139:8 beyond [7] - 14:20, 20:5, 94:24, 103:15, 103:24, 104:14 big [8] - 13:8, 19:14, 25:6, 27:11, 42:14, 44:25, 82:7, 103:22 big-picture [1] - 19:14 billable [1] - 95:4 billion [1] - 52:2 billions [1] - 50:20 bit [9] - 12:25, 17:23, 26:10, 36:25, 60:20, 77:7, 96:9, 96:14, 96:22 blaming [1] - 28:20 block [1] - 107:4 blow [1] - 9:21 blue [5] - 48:1, 106:4, 106:5, 109:16, 109:17 booked [1] - 139:5 books [2] - 131:5, 131:10 boom [1] - 103:20 bottom [3] - 30:15, 42:13, 85:1 Boulevard [2] - 2:5, 3:19 Box [1] - 4:7 box [2] - 106:19, 107:22 branch [1] - 66:7 breach [2] - 82:15, 86:17 break [1] - 63:10 brief [5] - 17:7, 53:4, 68:20, 70:24, 70:25 briefing [1] - 62:1 briefings [1] - 35:19 briefly [1] - 56:13 briefs [1] - 70:23 bright [1] - 46:6 bring [6] - 20:25, 29:1, 55:3, 55:7, 55:9, 55:13 broad [4] - 19:12, 36:7, 36:24, 38:15 Broad [1] - 2:13 broader [1] - 72:19 broadly [1] - 62:5 brother [2] - 120:5, 120:23 brother's [1] - 120:6 brought [2] - 37:18, 70:4 brunt [1] - 42:6 bucket [1] - 90:22 build [8] - 46:4, 92:17,	92:19, 92:20, 92:23, 111:22, 111:23, 139:7 Building [2] - 2:12, 4:5 building [3] - 45:22, 90:25, 91:2 built [2] - 45:21, 97:21 bulk [1] - 6:20 bullet [4] - 44:25, 48:20, 49:17, 116:3 bullets [1] - 115:25 bunch [1] - 73:18 bundles [1] - 78:7 burden [8] - 63:14, 98:20, 120:24, 131:24, 132:1, 132:3, 132:21 burdensome [1] - 137:18 Burr [1] - 66:25 business [18] - 13:11, 13:14, 13:15, 14:22, 36:23, 41:19, 43:23, 45:23, 50:6, 53:22, 77:25, 78:11, 78:18, 82:24, 95:14, 109:16, 126:9, 131:2 businesses [1] - 74:1 buy [2] - 74:6, 94:6 buyers [1] - 94:13 buying [6] - 72:11, 86:19, 86:21, 87:2, 94:4, 95:14 BY [1] - 12:18	58:16, 58:20, 59:2, 60:5, 60:9, 60:16, 60:19, 60:23, 61:2, 63:18, 134:16, 134:23, 136:1, 136:14, 136:19, 137:13, 139:11, 139:15 Caddell's [1] - 27:1 calendars [2] - 128:25, 129:9 California [2] - 4:15, 90:21 campaign [2] - 60:11, 136:8 candidly [1] - 48:8 cannot [2] - 40:8, 67:17 cap [2] - 57:2, 57:9 Capacity [1] - 39:7 capacity [3] - 20:19, 39:4, 39:8 captioned [1] - 140:7 capture [1] - 94:21 captured [1] - 84:14 car [1] - 73:3 card [2] - 72:12, 74:7 cards [1] - 71:16 care [2] - 26:15, 130:22 career [4] - 41:24, 42:1, 132:7 careful [1] - 23:15 carries [1] - 66:11 carve [1] - 7:5 Case [1] - 1:6 case [99] - 7:3, 7:11, 7:15, 7:22, 7:25, 8:5, 14:15, 15:12, 15:17, 15:18, 15:22, 15:25, 16:1, 17:6, 17:10, 17:11, 17:14, 17:16, 17:17, 17:18, 17:19, 17:25, 18:5, 18:6, 18:8, 18:10, 18:11, 18:14, 18:16, 18:22, 18:24, 20:12, 20:25, 21:12, 22:18, 23:13, 23:14, 23:16, 23:17, 24:7, 24:12, 24:13, 24:18, 24:19, 24:20, 24:21, 26:12, 28:11, 28:15, 29:13, 33:1, 33:11, 33:14, 34:2, 34:7, 34:25, 35:20, 36:7, 41:10, 41:11, 41:18, 42:2, 43:22, 51:17, 54:20, 55:3, 55:7, 55:9, 61:15, 61:17, 62:15, 63:15
----------	--	--	---	---

64:24, 64:25, 65:22, 66:16, 67:2, 67:3, 67:9, 67:24, 68:5, 68:25, 69:2, 73:18, 83:5, 83:25, 84:20, 85:24, 86:6, 87:17, 88:14, 88:17, 92:11, 99:25, 102:24, 103:15 cases [10] - 18:15, 18:21, 23:2, 24:9, 25:5, 29:1, 47:5, 68:23, 69:8, 132:8 cash [3] - 58:7, 59:7, 60:21 cashed [1] - 59:23 catch [1] - 63:10 catches [1] - 58:24 categories [6] - 36:7, 36:8, 36:9, 38:16, 115:13, 127:2 categorization [1] - 125:24 category [5] - 36:24, 38:22, 99:4, 123:25, 126:1 caucus [1] - 133:10 caught [1] - 132:10 caused [2] - 42:9, 55:14 causes [1] - 55:8 cell [1] - 79:17 census [2] - 80:19, 97:19 Center [1] - 34:20 certain [13] - 10:14, 14:9, 22:22, 65:8, 71:7, 71:8, 82:24, 92:1, 96:16, 96:21, 96:25, 125:7, 130:22 certainly [6] - 8:24, 23:9, 42:16, 59:18, 104:24, 130:2 certifiable [1] - 66:10 certificate [1] - 25:17 CERTIFICATE [1] - 140:1 certification [2] - 61:20, 98:13 certifications [2] - 93:8, 117:16 certified [3] - 17:13, 22:16, 41:12 certify [6] - 29:25, 39:15, 62:6, 99:25, 140:3, 140:10 challenge [2] - 22:19, 42:17 change [15] - 13:13, 13:15, 13:24, 14:1, 36:17, 36:23, 40:8, 51:15, 51:23, 52:1, 55:25, 101:4, 103:22, 121:16, 138:11 changed [5] - 42:4, 51:25, 105:12, 108:19, 108:20 changes [15] - 7:14, 8:8, 13:11, 14:25, 27:20, 27:23, 27:24, 41:20, 45:24, 45:25, 82:23, 105:2, 115:10, 133:17, 139:6 changing [4] - 45:20, 45:21, 91:1, 100:15 CHAPMAN [1] - 2:20 Chapman [1] - 5:24 character [1] - 20:19 characteristic [5] - 20:17, 31:15, 45:6, 71:5, 72:21 characteristics [3] - 39:6, 96:15, 96:19 characterization [2] - 84:24, 98:19 characterized [1] - 92:3 characterizing [1] - 87:14 characters [1] - 6:4 charged [1] - 51:10 charging [1] - 51:2 chart [1] - 135:5 charts [1] - 135:5 chats [1] - 12:14 check [11] - 57:12, 58:2, 58:4, 58:6, 58:7, 58:17, 58:18, 59:5, 59:7, 86:11, 107:25 checked [1] - 109:11 checks [2] - 59:23, 60:21 cheer [1] - 27:1 child [3] - 72:15, 75:5 Chinese [1] - 115:16 choice [6] - 65:25, 66:6, 79:22, 101:8, 110:6 ChoicePoint [3] - 83:5, 83:6, 83:10 choose [6] - 79:3, 79:14, 79:16, 81:11, 105:10, 105:14 chose [2] - 79:14, 105:17 chronology [1] - 27:3 Cincinnati [1] - 6:14 Circuit [7] - 17:14, 22:17, 62:17, 87:16, 87:19, 88:6, 130:16 circular [1] - 88:20 circularity [1] - 70:20 circumstance [4] - 52:4, 65:20, 67:8, 130:17 circumstances [4] - 41:17, 45:3, 73:20, 138:14 citations [1] - 61:15 citizen [1] - 42:8 Civil [2] - 1:6, 5:8 claim [7] - 44:19, 44:23, 58:11, 58:20, 65:25, 66:3, 87:18 claims [13] - 21:5, 27:7, 28:13, 29:12, 34:20, 34:22, 43:6, 57:13, 58:13, 58:25, 68:6, 85:23, 136:12 claims-base [1] - 58:13 Clark [2] - 7:12, 51:14 class [86] - 5:25, 6:4, 7:7, 7:12, 11:7, 13:23, 14:16, 18:9, 19:3, 20:23, 21:1, 21:10, 21:20, 22:12, 22:16, 22:19, 22:24, 27:22, 28:14, 29:6, 33:21, 37:13, 40:5, 40:6, 40:18, 40:22, 41:12, 41:16, 42:1, 42:16, 42:24, 43:12, 43:18, 44:3, 44:21, 48:24, 49:25, 51:14, 51:22, 52:21, 53:9, 53:10, 53:11, 53:12, 54:5, 56:24, 57:11, 58:17, 58:23, 59:5, 59:6, 60:3, 60:15, 60:22, 61:22, 61:24, 62:4, 62:6, 62:10, 62:16, 62:19, 63:3, 63:7, 63:10, 63:11, 64:25, 66:1, 66:4, 66:16, 85:23, 89:7, 90:6, 101:24, 102:1, 102:2, 102:7, 102:21, 103:1, 103:13, 103:17, 103:21, 132:5, 134:19 Class [1] - 45:1 class' [1] - 52:25 class-approval [1] - 101:24 classes [5] - 36:6, 36:8, 46:13, 57:8, 61:1 classification [2] - 88:18, 88:19 clause [1] - 68:22 clauses [1] - 68:21 clear [12] - 20:12, 24:4, 40:21, 43:5, 46:6, 67:25, 68:2, 68:8, 68:9, 85:13, 98:4, 110:4 clearly [9] - 23:5, 30:23, 45:10, 67:4, 67:8, 67:14, 69:21, 88:3, 88:19 CLERK [5] - 5:3, 5:8, 63:23, 64:3, 139:17 clerk [1] - 33:3 click [7] - 11:17, 79:10, 107:6, 109:9, 109:10, 121:7, 122:19 clicked [2] - 106:19, 109:22 client [6] - 62:7, 90:23, 100:16, 101:3, 101:12, 102:9 clockwise [1] - 115:24 close [1] - 130:7 clustered [1] - 79:9 Clyde [2] - 2:5, 3:19 co [7] - 5:22, 6:1, 6:12, 7:2, 23:21 co-counsel [5] - 6:1, 6:12, 7:2, 23:21 co-defendants [1] - 21:3 co-lead [1] - 12:22 code [1] - 91:12 cognizant [1] - 131:24 Coke [1] - 42:6 collect [3] - 26:12, 34:3, 94:25 collected [4] - 16:2, 16:7, 49:3, 130:19 collecting [4] - 94:7, 94:18, 95:2, 95:4 collection [27] - 9:12, 16:14, 17:2, 29:17, 29:19, 30:2, 77:13, 81:9, 81:13, 81:21, 84:7, 92:8, 92:14, 92:18, 95:18, 105:17, 107:7, 109:19, 109:22, 114:21, 117:19, 119:17, 124:7, 124:23, 125:4, 126:1, 127:11 Collection [2] - 94:9, 106:18 Collection-decisioning [1] - 106:18 collection-decisioning [10] - 95:18, 105:17, 107:7, 109:19, 109:22, 114:21, 124:7, 124:23, 125:4, 127:11 collectioning [1] - 13:18 Collections [1] - 31:24 collections [22] - 13:17, 17:20, 31:23, 38:1, 75:9, 93:24, 94:1, 94:2, 94:3, 103:19, 105:8, 105:9, 106:24, 109:7, 110:8, 115:22, 116:21, 116:23, 116:24, 117:6, 119:7, 121:13 collections-decisioning [3] - 109:7, 116:23, 119:7 collector [12] - 54:21, 54:22, 69:16, 69:18, 73:6, 80:6, 95:15, 95:16, 100:1, 113:1, 113:23, 120:4 collectors [18] - 17:22, 19:18, 21:4, 29:20, 34:13, 37:16, 44:14, 69:14, 76:5, 78:6, 78:8, 78:23, 82:17, 94:10, 94:16, 113:11, 120:2, 120:20 color [2] - 106:1, 106:5 Columbus [1] - 113:19 combination [1] - 50:17 comfortable [4] - 55:15, 114:2, 136:2, 138:2 coming [3] - 91:12, 127:4, 132:25 commence [1] - 137:9 commencing [1] - 18:14 Comment [1] - 83:1 comment [5] - 9:17, 44:10, 79:24, 83:8, 86:2 comments [4] - 6:17,
--

121:9, 122:11, 122:20	complex [2] - 90:13, 133:23	conferring [1] - 23:21 confident [1] - 57:22 confirm [5] - 45:8, 74:3, 107:9, 107:11, 107:14	115:19, 117:17, 118:12, 118:14, 119:3, 119:6, 121:20, 124:24, 128:9
commercial [1] - 81:19	complexity [2] - 88:11, 90:22	confirmed [2] - 26:12, 88:6	contacted [2] - 37:2, 38:19
Commission [4] - 68:11, 82:9, 82:11, 82:13	compliance [3] - 108:4, 125:19, 129:10	confusing [1] - 88:20 conjunction [1] - 57:17	contain [2] - 43:22, 45:6
commission [1] - 83:9	compliant [3] - 101:9, 126:15, 126:19	consensus [1] - 20:14 consent [3] - 76:22, 82:22, 83:17	contained [1] - 37:22
commitment [1] - 98:13	complicated [1] - 7:22	consequences [1] - 65:8	contains [1] - 69:17
commitments [1] - 93:8	comply [1] - 126:9	consequently [2] - 66:5, 66:9	contemplate [1] - 47:24
common [3] - 57:2, 66:4, 81:17	complying [1] - 129:15	consider [3] - 64:21, 81:13, 92:7	contemplated [1] - 101:23
commonality [1] - 22:13	component [3] - 56:14, 104:13, 125:25	considerable [1] - 91:15	contend [3] - 69:15, 82:8, 86:5
commonsense [14] - 35:17, 36:3, 36:4, 39:18, 46:22, 48:5, 48:8, 48:13, 90:12, 90:15, 90:17, 116:14, 118:8, 135:10	components [1] - 43:11	considerate [1] - 108:25	content [1] - 37:25
commonsensible [2] - 79:25, 138:17	comprehensive [22] - 17:21, 19:6, 19:8, 19:16, 20:4, 22:5, 28:19, 29:16, 29:20, 30:12, 30:23, 31:17, 32:4, 34:13, 35:16, 37:16, 38:1, 38:18, 44:14, 79:19, 109:7, 119:4	consideration [1] - 61:19	contention [3] - 37:11, 37:13, 112:17
Commonwealth [1] - 140:22	compromise [8] - 14:10, 16:5, 16:14, 36:12, 48:23, 102:15, 118:3, 118:6	considered [1] - 88:16	contentious [1] - 107:20
communicate [2] - 120:4, 131:9	compromises [1] - 14:19	consistent [1] - 66:14	context [22] - 9:1, 13:4, 14:19, 17:10, 18:15, 21:1, 21:17, 22:10, 22:13, 22:17, 25:5, 26:17, 53:8, 61:21, 67:11, 69:25, 71:23, 77:9, 93:14, 127:16, 130:4, 130:15
communication [5] - 69:6, 70:18, 71:6, 71:7, 125:1	computer [4] - 91:12, 120:25, 123:19, 128:23	consistently [1] - 76:24	contextual [1] - 69:1
communications [3] - 21:6, 68:14, 72:22	computers [1] - 26:20	constantly [3] - 45:20, 45:21, 100:15	continue [6] - 10:15, 12:9, 16:14, 16:15, 63:15, 129:2
companies [2] - 48:17, 129:5	concede [1] - 26:6	constitute [1] - 76:15	continued [2] - 54:22, 71:15
comparable [3] - 57:14, 62:16, 130:17	conceded [1] - 114:10	constitutes [1] - 140:11	continuing [4] - 18:16, 21:8, 27:8, 47:20
compared [1] - 90:22	concept [2] - 67:21, 122:13	Constitutional [1] - 67:7	continuum [1] - 24:7
comparison [1] - 105:6	concepts [1] - 104:22	construct [1] - 61:22	contract [4] - 98:1, 107:13, 123:20, 123:21
compensation [1] - 53:1	concern [1] - 135:15	construction [7] - 68:24, 69:20, 73:14, 73:21, 86:4, 86:22, 87:4	contracts [2] - 78:19, 128:19
competitive [5] - 8:11, 100:18, 101:2, 102:19, 121:18	concerned [1] - 102:9	construe [1] - 70:14	contractual [4] - 49:1, 93:8, 98:12, 116:25
competitor's [1] - 101:11	concerns [3] - 99:18, 120:10, 122:7	construed [1] - 24:23	contractually [2] - 48:24, 49:13
competitors [5] - 92:5, 101:5, 101:14, 102:11, 103:8	concession [1] - 117:3	construes [1] - 73:19	contractual [1] - 137:8
complaint [8] - 14:11, 65:2, 82:22, 91:7, 91:25, 92:15, 93:22, 118:22	concessions [1] - 118:25	consumed [1] - 76:3	contractually [1] - 45:1
complete [2] - 10:12, 140:12	conclude [2] - 25:3, 48:13	consumer [99] - 24:23, 24:25, 25:4, 25:16, 38:6, 44:12, 45:2, 50:24, 51:6, 55:8, 56:5, 65:3, 65:7, 65:19, 66:22, 68:1, 68:4, 68:11, 68:13, 69:9, 69:13, 69:17, 69:19, 70:6, 70:12, 70:14, 70:18, 71:4, 71:6, 71:9, 71:14, 71:19, 71:21, 71:24, 71:25, 72:3, 72:5, 72:16, 72:22, 73:7, 73:19, 74:21,	contrary [2] - 85:10, 85:20
completed [1] - 11:4			conventional [1] - 52:17
completely [1] - 130:17			conversation [6] - 15:13, 26:21, 90:19, 98:24, 100:9, 100:22

conversations [5] - 7:21, 17:7, 18:12, 18:13, 19:3	14:17, 14:18, 14:22, 15:2, 15:7, 16:4, 17:12, 23:25, 24:24, 25:1, 25:2, 25:9, 29:18, 40:20, 41:22, 41:25, 43:16, 43:18, 43:25, 45:15, 45:19, 49:12, 54:13, 56:17, 58:24, 59:17, 61:4, 61:13, 61:18, 62:4, 62:17, 63:24, 64:5, 64:11, 64:18, 64:20, 64:23, 66:12, 67:3, 67:15, 69:23, 84:23, 85:3, 88:4, 100:11, 102:17, 103:13, 129:17, 131:3, 131:25, 132:2, 132:3, 132:12, 132:25, 136:2, 138:25, 139:18, 140:6, 140:8	93:18, 94:12, 94:14, 94:19, 95:7, 95:11, 95:20, 95:24, 97:6, 98:4, 98:8, 98:10, 99:16, 99:20, 100:5, 101:15, 103:10, 104:1, 104:6, 104:15, 104:18, 105:14, 105:18, 105:20, 105:23, 106:22, 107:1, 107:24, 108:10, 108:23, 109:2, 110:2, 110:5, 110:10, 110:16, 110:21, 110:24, 111:2, 111:6, 111:8, 111:16, 111:19, 111:25, 112:3, 112:7, 112:9, 112:18, 112:23, 114:7, 114:14, 114:19, 115:5, 115:11, 115:25, 116:3, 116:6, 116:8, 116:13, 116:17, 117:5, 117:7, 117:12, 117:25, 118:10, 118:24, 120:22, 121:11, 121:15, 121:23, 122:2, 122:8, 122:14, 122:22, 123:9, 123:17, 124:3, 124:11, 124:14, 124:17, 124:21, 125:8, 126:7, 126:11, 127:7, 127:14, 128:3, 129:12, 129:23, 130:2, 131:8, 131:14, 131:17, 131:22, 132:22, 133:6, 133:21, 134:1, 134:5, 134:11, 134:14, 135:1, 135:25, 136:13, 136:21, 137:2, 137:4, 137:12, 137:15, 139:2, 139:12, 140:1	Courts [2] - 43:1, 68:10 cover [2] - 56:15, 64:17 coverage [1] - 65:5 covered [5] - 13:23, 20:21, 48:3, 54:11, 121:21 covering [3] - 9:20, 55:2 COX [1] - 4:20 Cox [1] - 89:19 crammed [1] - 27:13 CRAs [1] - 21:3 created [1] - 114:21 creative [2] - 81:14, 113:13 credential [2] - 93:4, 127:6 credentialed [4] - 106:16, 109:20, 109:21, 128:17 credentialing [7] - 77:24, 98:14, 98:21, 98:23, 106:15, 127:9, 127:12 credentials [1] - 56:8 credit [20] - 15:20, 20:18, 31:5, 31:18, 39:4, 51:16, 51:17, 70:8, 71:10, 72:7, 72:11, 74:7, 76:19, 83:11, 83:12, 83:13, 86:11, 123:25 Credit [27] - 7:6, 7:14, 12:23, 15:20, 16:8, 16:10, 16:22, 17:22, 20:16, 20:21, 25:23, 28:23, 38:9, 39:17, 40:15, 53:16, 57:13, 76:16, 82:12, 99:23, 103:20, 118:15, 119:8, 121:22, 124:7, 124:23, 126:10 credit-decisioning [1] - 123:25 creditor [2] - 68:16, 72:10 creditor's [1] - 112:25 creditors [1] - 95:1 creditworthiness [4] - 20:18, 32:18, 39:4, 39:7 crime [2] - 73:5, 86:11 critical [6] - 14:3, 14:15, 33:25, 105:24, 125:24, 125:25 crystal [1] - 100:19	culmination [1] - 15:16 culpability [1] - 106:13 Culpeper [1] - 140:15 cure [1] - 119:22 current [8] - 23:14, 57:20, 76:7, 106:23, 107:17, 108:1, 110:8, 127:18 customer [3] - 77:14, 95:13, 124:15 customers [14] - 91:15, 123:5, 127:8, 127:10, 128:5, 128:6, 128:8, 128:14, 128:15, 128:17, 128:18, 128:22, 129:9 cut [2] - 53:12, 78:21 cuts [1] - 76:1 cutting [1] - 92:7 cutting-edge [1] - 92:7 CVS [3] - 113:22, 113:23, 114:13 cy [3] - 59:16, 59:18, 59:20
D				
DALE [2] - 3:3, 3:4 dale@ pittmanlawoffice. com [1] - 3:8 damage [1] - 66:3 damages [10] - 25:7, 44:12, 44:13, 44:16, 44:20, 65:24, 66:8, 66:9, 67:12 dangerous [2] - 7:24, 13:1 data [29] - 80:19, 81:1, 86:17, 87:9, 90:13, 92:1, 92:8, 93:9, 93:15, 93:17, 96:11, 96:12, 96:25, 97:8, 97:9, 97:19, 99:11, 99:17, 100:24, 100:25, 110:20, 114:24, 115:13, 115:20, 117:3, 121:14, 122:1, 129:5 data-breach [1] - 86:17 database [7] - 16:20, 17:2, 17:3, 43:15, 52:8, 99:1, 121:25 databases [4] - 16:4, 16:16, 16:17, 16:18				

date [9] - 27:3, 43:16, 46:12, 78:9, 110:13, 114:9, 129:18, 129:20, 131:5	137:10	73:20, 86:23, 87:6, 87:18, 87:20, 87:24, 87:25, 88:3, 92:5, 92:20, 92:22, 93:11, 96:8	77:4	disciplined [1] - 28:3
dates [5] - 27:9, 28:8, 35:4, 127:25, 129:16	decide [3] - 98:15, 101:11, 102:6	definitions [1] - 92:2	determine [2] - 28:13, 40:5	disclosed [1] - 110:12
David [2] - 5:13, 6:10	decided [4] - 46:20, 57:9, 92:17, 118:18	degree [3] - 47:18, 52:4, 61:23	determined [2] - 25:1, 40:17	discount [1] - 123:19
DAVID [1] - 4:3	decipherer [1] - 30:10	delay [2] - 42:18, 97:4	determining [3] - 64:21, 76:18, 77:12	discovered [1] - 82:14
david.anthony@troutmansanders.com [1] - 4:10	decision [10] - 22:18, 23:23, 25:10, 84:18, 87:16, 99:2, 101:9, 101:11, 107:21, 130:16	delete [1] - 55:12	develop [1] - 128:24	discovery [8] - 16:1, 23:12, 23:13, 23:16, 24:5, 24:13
Davis [1] - 87:22	decisioning [21] - 31:25, 32:1, 95:18, 105:15, 105:16, 105:17, 106:18, 107:7, 109:7, 109:19, 109:22, 114:21, 116:23, 119:7, 123:25, 124:7, 124:23, 125:4, 127:11, 130:21, 133:3	deliberate [1] - 28:4	developing [2] - 77:22, 127:22	discussed [3] - 33:19, 33:20, 53:9
days [6] - 27:11, 133:14, 134:10, 134:11, 134:17, 136:18	decisions [6] - 13:18, 14:9, 73:16, 99:11, 114:23	delicate [1] - 62:2	development [6] - 24:21, 87:15, 91:13, 129:1, 129:3, 129:9	discussing [2] - 12:7, 126:16
Dayton [2] - 4:23, 6:13	decease [1] - 13:18, 14:9, 73:16, 99:11, 114:23	demarcation [1] - 49:13	device [1] - 44:21	Discussion [6] - 71:2, 88:25, 112:11, 126:21, 133:5, 134:8
dead [1] - 9:12	deceasing [1] - 13:18, 14:9, 73:16, 99:11, 114:23	demonstrated [1] - 41:11	Diagonal [1] - 3:12	discussion [13] - 18:7, 26:24, 27:9, 47:17, 63:25, 85:2, 101:19, 104:9, 108:15, 114:3, 115:8, 134:25, 136:20
dead-tree [1] - 9:12	deceasingly [1] - 13:18, 14:9, 73:16, 99:11, 114:23	denied [4] - 17:13, 24:25, 62:17, 62:18	diagram [1] - 70:22	discussions [1] - 118:6
deadlines [1] - 129:15	deceit [1] - 13:18, 14:9, 73:16, 99:11, 114:23	denying [2] - 84:24, 85:6	dicing [1] - 79:20	dismiss [5] - 19:1, 24:22, 25:2, 28:12, 28:13
deal [7] - 10:13, 42:14, 57:8, 64:12, 120:14, 126:22, 133:16	deceitfully [1] - 13:18, 14:9, 73:16, 99:11, 114:23	Department [1] - 97:10	dismissal [2] - 10:17, 85:23	dismissed [1] - 17:17, 18:5, 18:6, 18:10, 18:22, 18:25, 19:1, 21:6, 27:11, 29:13
dealer [1] - 80:23	deceitful [1] - 13:18, 14:9, 73:16, 99:11, 114:23	dependent [1] - 25:7	differentiate [1] - 34:8	dispute [14] - 37:3, 37:21, 37:25, 38:2, 38:11, 38:20, 42:15, 55:10, 64:24, 93:7, 119:21, 120:6, 124:4
dealing [2] - 74:3, 74:20	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	depositions [2] - 24:19, 26:11	differentiates [1] - 30:24	disputed [2] - 56:21, 88:9
deals [1] - 99:14	deceitfully [1] - 13:18, 14:9, 73:16, 99:11, 114:23	deprive [1] - 87:8	differentiating [1] - 35:15	disputes [2] - 62:20, 126:12
dealt [1] - 90:8	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	derived [1] - 17:1	differently [2] - 61:24, 96:10	distills [1] - 87:10
death [1] - 139:8	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	derives [1] - 70:19	difficult [3] - 29:1, 29:7, 138:11	distinction [1] - 99:4
debate [1] - 20:11	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	describe [1] - 89:11	difficulties [2] - 64:20, 82:5	distinctions [1] - 106:11
debated [1] - 108:5	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	described [2] - 16:19, 63:14	difficulty [4] - 10:21, 42:10, 51:13	distress [1] - 31:13
Debt [1] - 94:9	deceitfulness [1] - 13:18, 14:9, 73:16, 99:11, 114:23	describing [1] - 79:5	dime [1] - 134:6	distribution [1] - 57:12
debt [46] - 17:21, 19:18, 21:4, 29:17, 29:19, 30:2, 34:13, 37:15, 44:14, 54:21, 54:22, 69:14, 69:16, 69:18, 72:5, 72:9, 72:12, 73:6, 76:5, 77:13, 78:6, 78:8, 78:23, 80:6, 82:17, 94:4, 94:6, 94:10, 94:13, 94:18, 94:25, 95:2, 95:4, 95:14, 99:25, 113:11, 113:12, 113:17, 113:23, 119:20, 120:1, 120:2, 120:4, 120:6, 120:19	defeat [1] - 66:16	description [1] - 103:16	direction [3] - 10:9, 47:14, 112:21	DISTRICT [2] - 1:1, 1:2
debt-buyers [1] - 94:13	defendant [13] - 6:8, 10:20, 11:8, 27:7, 29:3, 29:5, 51:25, 52:15, 52:17, 53:19, 67:15, 69:4, 125:14	design [3] - 81:2, 101:23, 128:24	direct [6] - 57:12, 58:16, 95:1, 99:8, 136:7, 136:11	district [1] - 57:5
debtor [2] - 113:8, 113:15	defendants [8] - 5:14, 8:7, 21:3, 42:25, 47:7, 49:5, 66:16, 85:12	designed [2] - 80:15, 81:7	directly [1] - 122:6	District [6] - 6:3, 17:25, 25:9, 58:24, 87:22, 140:6
debtor's [2] - 119:17, 119:18	defendants' [3] - 64:19, 66:14, 67:18	designing [1] - 44:7	disadvantage [3] - 8:11, 100:18, 102:19	divide [1] - 82:1
debtors [1] - 72:8	defense [2] - 7:8, 90:8	despite [1] - 6:25	disagree [2] - 11:8, 15:15	divides [4] - 9:7, 10:2,
debts [1] - 119:15	defenses [3] - 32:22, 64:20, 82:7	destroyed [2] - 23:18, 34:21	disagreement [1] - 52:10	10:23, 10:24
December [6] - 27:15, 33:10, 128:1, 128:21, 136:24	define [1] - 71:5	detail [6] - 47:18, 96:4, 96:20, 101:22, 104:22, 129:25	disagreements [1] - 10:4	divisive [1] - 10:6
	defined [3] - 43:12, 62:4, 76:16	detailed [5] - 19:18, 27:19, 43:10, 47:21, 92:12	disagrees [1] - 49:6	docile [1] - 49:8
	defining [1] - 70:4	details [6] - 9:6, 13:6, 102:9, 102:22, 103:1, 138:1		docket [1] - 81:25
	definitely [1] - 31:10	detect [3] - 74:2, 74:19, 74:23		documenting [1] -
	definition [26] - 31:4, 62:17, 63:3, 65:21, 66:23, 68:8, 68:12, 68:13, 69:9, 69:19, 69:23, 70:15, 71:4	detection [1] - 75:9		

<p>8:19 documents [7] - 23:14, 24:8, 122:14, 131:15, 133:12, 135:8, 135:20 dollars [9] - 46:21, 50:20, 51:4, 51:5, 51:10, 52:2, 52:18, 53:13, 54:1 done [17] - 9:10, 17:6, 47:4, 64:13, 64:17, 76:23, 88:21, 92:15, 102:13, 105:3, 110:17, 112:5, 115:18, 128:1, 128:20, 139:13 Donna [2] - 140:3, 140:20 Donnell [3] - 18:8, 33:19, 34:11 doubt [2] - 65:1, 88:15 down [11] - 8:20, 48:21, 76:1, 87:10, 90:15, 91:12, 92:12, 123:11, 123:14, 126:16, 134:2 draft [3] - 9:8, 11:4, 133:19 draw [1] - 8:18 drew [2] - 67:3, 67:20 drill [1] - 123:14 drilling [1] - 123:11 driven [1] - 80:5 driver [1] - 117:13 driver's [1] - 117:15 driving [1] - 73:3 drop [1] - 90:22 drug [1] - 80:22 dual [1] - 136:23 dual-track [1] - 136:23 due [1] - 104:12 during [3] - 98:23, 102:12, 107:13 </p>	<p>30:22, 31:10 educational [2] - 91:18, 123:4 effective [2] - 60:12, 129:20 effectively [2] - 31:5, 36:9 effects [1] - 38:17 efficient [1] - 120:20 effort [4] - 18:7, 62:13, 76:1, 126:25 efforts [3] - 29:17, 29:19, 75:9 eight [3] - 51:4, 51:5, 51:10 either [11] - 23:17, 37:20, 38:20, 43:17, 49:15, 56:20, 59:5, 67:10, 105:11, 126:1, 129:19 electrical [1] - 91:2 electricity [1] - 90:25 element [2] - 24:20, 90:17 elements [9] - 61:20, 61:23, 63:8, 66:2, 97:8, 97:9, 97:11, 99:17, 126:24 eligibility [20] - 68:15, 68:18, 69:12, 69:22, 70:4, 70:16, 71:8, 71:10, 71:18, 71:22, 72:2, 72:17, 73:24, 76:12, 76:18, 76:25, 77:4, 96:18, 114:23, 115:2 eliminate [2] - 34:12, 108:8 eliminated [3] - 97:19, 115:23, 116:25 eliminating [1] - 29:6 ellipse [1] - 71:23 emphasize [1] - 86:1 employed [1] - 113:24 employees [1] - 123:6 employment [6] - 68:17, 70:9, 71:11, 76:19, 78:16, 125:19 en [1] - 88:2 enable [1] - 119:4 encompassed [1] - 25:23 Encore [1] - 94:5 encounter [1] - 82:6 encountered [1] - 119:24 end [20] - 6:21, 18:14, 34:23, 40:6, 50:3, 52:11, 54:2, 54:4, 59:22, 79:18, 85:9, </p>	<p>114:1, 123:22, 127:23, 127:25, 129:24, 134:16, 134:17, 135:19, 137:10 endeavor [1] - 127:5 ended [1] - 54:23 enforced [1] - 82:11 enforcement [16] - 36:15, 73:1, 74:24, 75:2, 80:21, 80:25, 81:7, 82:17, 84:7, 86:7, 87:13 Enforcement [1] - 75:1 engaging [1] - 133:14 engineering [3] - 84:12, 91:11, 127:2 English [1] - 115:16 enjoy [1] - 56:17 entered [3] - 84:23, 85:11, 102:24 enters [1] - 43:16 enthusiastic [1] - 55:25 entire [4] - 20:25, 41:25, 63:2, 88:17 entirely [2] - 98:18, 99:5 entirely [3] - 95:9, 98:20, 107:5 entities [6] - 36:11, 36:12, 36:19, 46:2, 94:17, 125:15 entitled [2] - 51:7, 132:6 entity [1] - 57:21 enumerated [1] - 86:12 EPIC [2] - 83:3 equally [1] - 85:14 equivalent [3] - 32:2, 91:3, 106:25 ERAUSQUIN [1] - 3:10 Erausquin [1] - 6:5 error [1] - 63:16 especially [1] - 35:13 ESQUIRE [9] - 2:3, 2:10, 2:19, 3:3, 3:10, 3:17, 4:3, 4:12, 4:19 essential [1] - 81:1 essentially [4] - 11:2, 80:3, 97:15, 98:6 establish [4] - 43:21, 56:22, 68:15, 70:3 established [6] - 67:5, 67:9, 67:14, 69:21, 88:3, 88:19 establishing [2] - </p>	<p>67:21, 106:13 estate [1] - 75:18 estimate [1] - 43:25 estimates [2] - 44:8, 53:20 estoppel [2] - 48:25, 49:1 et [4] - 1:5, 1:11, 5:9, 5:10 evaluate [4] - 51:9, 72:8, 102:2, 103:13 evaluation [4] - 30:1, 31:5, 103:7 event [1] - 55:7 events [1] - 123:4 eventually [1] - 53:5 everywhere [2] - 121:5, 122:10 evidence [2] - 62:8, 67:18 evident [2] - 138:20, 138:22 evolved [1] - 7:4 evolving [2] - 45:19, 46:3 ex [2] - 12:2, 132:20 exactly [8] - 45:13, 82:3, 94:16, 95:21, 98:9, 111:17, 111:20, 138:19 example [17] - 27:21, 47:19, 50:25, 54:19, 71:24, 75:16, 80:22, 81:15, 94:5, 97:14, 97:16, 100:8, 112:15, 113:7, 113:18, 132:14, 136:16 examples [1] - 111:13 except [2] - 59:25, 100:24 exceptions [1] - 95:3 excerpt [1] - 68:20 exchange [1] - 44:23 exchanged [3] - 9:8, 27:18, 133:20 excited [1] - 13:13 exclude [1] - 66:23 exclusive [2] - 99:5, 99:6 excuse [1] - 17:12 exemplary [5] - 100:14, 100:21, 101:21, 102:10, 108:17 exercise [1] - 125:13 Exhibit [1] - 93:22 existing [2] - 127:8, 128:8 exists [1] - 52:7 </p>	<p>face [2] - 22:20, 28:18 faced [2] - 51:14, 51:25 faces [1] - 138:6 fact [22] - 17:13, 17:22, 21:3, 25:3, 29:13, 37:6, 37:25, 45:16, 67:2, 68:19, 69:8, 72:12, 72:13, 82:8, 86:5, 86:18, 86:20, 87:3, 108:21, 113:1 factor [5] - 68:15, 69:17, 76:18, 88:16, 89:8 factors [3] - 39:4, 82:5, 91:20 factual [1] - 7:24 failed [1] - 62:12 </p>
E				
<p>early [1] - 136:15 easier [4] - 26:17, 26:22, 42:16, 56:15 easily [1] - 130:19 EASTERN [1] - 1:2 Eastern [4] - 6:3, 17:25, 87:22, 140:6 easy [1] - 42:15 economic [1] - 51:9 economics [2] - 51:14, 52:1 edge [1] - 92:7 educating [1] - 125:2 education [3] - 20:3, </p>				

Fair [28] - 7:6, 7:14, 12:23, 15:20, 16:8, 16:10, 16:22, 17:22, 20:16, 20:21, 25:23, 28:23, 38:9, 39:16, 40:15, 53:16, 57:13, 76:16, 82:12, 94:8, 99:23, 103:19, 118:15, 119:8, 121:22, 124:7, 124:23, 126:10	feat [1] - 134:2	first [18] - 5:21, 32:23, 33:6, 33:7, 44:6, 47:17, 74:11, 79:3, 89:21, 94:15, 95:1, 95:15, 101:24, 110:3, 110:4, 113:14, 115:13, 119:1	font [1] - 11:5	FTC's [1] - 87:24
February [4] - 134:17, 135:20, 140:15	Federal [9] - 68:10, 72:1, 72:14, 76:16, 82:9, 82:10, 82:13, 83:1, 112:9	first-party [2] - 94:15, 95:15	fonts [1] - 48:1	FTCPA [1] - 120:2
Federal [9] - 68:10, 72:1, 72:14, 76:16, 82:9, 82:10, 82:13, 83:1, 112:9	FedEx [1] - 10:17	fisher [1] - 81:19	footnote [5] - 42:12, 56:2, 67:19, 83:17, 106:7	full [2] - 9:5, 83:9
fee [6] - 52:10, 52:11, 52:17, 52:18, 52:25, 53:6	feedback [5] - 10:8, 35:12, 36:3, 105:19, 130:23	fisher-person [1] - 81:19	FOR [1] - 12:18	full-throated [1] - 9:5
fees [6] - 35:7, 50:7, 50:8, 56:24, 61:6	felt [8] - 10:5, 17:8, 21:9, 25:25, 38:19, 41:18, 41:20, 57:5	Fisheries [1] - 97:10	force [1] - 59:8	fully [1] - 86:17
few [4] - 13:22, 15:11, 20:12, 64:18	fits [2] - 21:18, 131:3	fishing [4] - 35:25, 80:1, 81:14, 97:3	foregoing [1] - 140:10	fund [3] - 56:23, 57:2, 59:15
fewer [1] - 68:21	five [10] - 12:23, 15:17, 18:20, 31:10, 39:24, 47:6, 53:25, 89:24, 97:11, 97:12	fit [2] - 38:21, 115:14	forfeit [1] - 48:24	funds [1] - 59:24
fiddling [1] - 105:13	Five [1] - 53:24	fish [1] - 119:21	forgot [1] - 135:4	furnish [3] - 69:14, 71:25, 106:10
fiduciaries [1] - 95:3	fix [1] - 119:21	FL [1] - 117:7	form [4] - 52:6, 102:23, 111:3, 134:18	furnished [3] - 69:16, 69:18, 72:2
fields [2] - 116:20, 116:22	flag [2] - 80:25, 108:8	flag [2] - 80:25, 108:8	formal [3] - 26:15, 73:17, 136:6	furnishes [1] - 87:5
fifth [1] - 113:15	flags [1] - 130:9	flange [1] - 45:13	formally [1] - 26:21	furnishing [1] - 86:13
fighting [1] - 114:18	flesh [1] - 134:19	flap [1] - 113:4	format [1] - 8:2	fusion [1] - 87:9
figure [4] - 45:13, 112:19, 121:5, 133:11	flexibility [1] - 46:8	flipping [1] - 90:24	formed [1] - 24:9	future [3] - 12:11, 31:14, 54:12
figuring [2] - 91:13, 120:24	flies [1] - 81:18	float [1] - 65:8	forming [1] - 67:4	
file [16] - 21:11, 37:2, 37:3, 37:7, 37:17, 38:8, 38:13, 38:14, 51:6, 56:21, 62:21, 93:6, 117:17, 132:15	flip [1] - 113:4	Floor [1] - 2:14	forms [1] - 37:12	
filled [8] - 17:18, 17:25, 24:18, 28:12, 33:11, 51:18, 82:21, 84:25	flipping [1] - 90:24	floor [1] - 6:18	forth [1] - 132:10	
filings [1] - 24:6	flown [1] - 27:16	Florida [1] - 117:8	forty [1] - 89:24	
final [2] - 8:15, 28:4	fluent [1] - 100:15	Florida [1] - 117:10	forward [10] - 5:20,	
finalized [1] - 17:17	fluid [1] - 48:2	flow [1] - 26:22	25:25, 40:3, 41:10, 43:7, 49:14, 78:9, 82:4, 82:25, 85:19	
finally [2] - 9:13, 129:18	fluidity [4] - 45:17, 45:23, 46:5, 47:17	flown [1] - 27:16	foundation [1] - 8:22	
finance [1] - 59:20	flush [1] - 100:7	frankly [5] - 7:5, 47:3, 57:6, 103:12, 114:20	four [3] - 12:23, 35:4, 47:6	
financed [1] - 41:15	focus [1] - 108:22	frank [2] - 98:23, 99:10	Fourth [4] - 17:14, 22:17, 62:17, 130:16	
financial [3] - 31:13, 71:13, 110:20	focused [2] - 34:2, 46:3	francis [10] - 5:11, 6:1, 6:2, 17:18, 48:19, 57:4, 85:19, 87:18, 123:19, 124:1	framework [1] - 35:8	
finder [1] - 79:15	focusing [1] - 95:25	FRANCIS [5] - 2:10, 2:11, 4:12, 54:6, 123:20	Francis [1] - 70:21	
fine [4] - 59:21, 74:13, 109:2, 116:17	Foerster [2] - 6:14, 64:10	francis' [1] - 70:21	Francisco [3] - 4:15, 6:15, 74:7	
finished [1] - 133:12	FOERSTER [1] - 4:13	frankly [5] - 7:5, 47:3, 57:6, 103:12, 114:20	frank [2] - 98:23, 99:10	
fire [1] - 52:14	folks [6] - 21:20, 21:22, 22:24, 60:21, 109:3, 137:6	frankly [5] - 7:5, 47:3, 57:6, 103:12, 114:20	frankly [5] - 7:5, 47:3, 57:6, 103:12, 114:20	
firm [6] - 5:23, 6:2, 6:13, 17:19, 132:23, 132:24	followed [2] - 61:20, 62:5	front [6] - 9:11, 15:18, 16:18, 16:25, 76:13, 76:23	front [6] - 9:11, 15:18, 16:18, 16:25, 76:13, 76:23	
firms [2] - 84:9, 84:10	following [1] - 132:2	FTC [13] - 73:16, 73:17, 82:20, 83:7, 83:25, 84:16, 85:16, 86:3, 86:16, 86:20, 89:1, 95:1	front [6] - 9:11, 15:18, 16:18, 16:25, 76:13, 76:23	
FCRA-governed [1] - 126:2				

graduate [2] - 5:22, 50:10	Hannah [3] - 5:5, 64:4, 140:8	30:21, 31:9, 48:12, 97:20	113:20, 120:19	95:6, 104:4, 107:14, 115:4, 122:1, 122:25, 125:3, 125:16, 126:3, 126:6, 129:11, 131:7, 136:3
Graham [20] - 17:25, 18:15, 18:24, 19:7, 20:22, 21:1, 23:13, 23:17, 23:20, 26:10, 26:12, 27:8, 27:10, 27:22, 28:11, 28:15, 29:13, 33:11, 33:20, 119:19	happy [8] - 23:3, 26:18, 26:20, 37:23, 135:24, 136:1, 139:2, 139:3	homepage [2] - 105:8, 122:10	identical [1] - 58:22	INC [1] - 1:10
grain [1] - 46:22	hard [7] - 9:18, 43:1, 47:13, 130:5, 130:10, 138:14, 138:20	Honor [66] - 5:21, 5:23, 6:7, 6:10, 7:20, 8:6, 12:3, 12:8, 12:15, 12:19, 17:12, 19:13, 23:2, 23:9, 24:15, 26:14, 28:10, 30:14, 31:21, 32:24, 33:6, 36:5, 36:6, 39:2, 41:2, 42:21, 46:10, 46:25, 50:13, 51:1, 53:8, 54:17, 55:17, 56:3, 56:13, 57:17, 60:6, 61:8, 61:12, 61:15, 63:4, 63:18, 64:7, 65:14, 80:13, 89:10, 89:16, 97:4, 97:24, 98:17, 99:3, 99:22, 101:21, 102:16, 103:11, 104:3, 109:1, 118:2, 126:23, 129:21, 131:16, 131:25, 132:12, 135:22, 139:11, 139:15	identify [2] - 29:15, 38:17	incentive [1] - 57:10
grammar [1] - 105:22	harm [2] - 55:8, 55:14	Haxall [1] - 4:6	identity [4] - 21:23, 62:22, 74:19, 83:7	include [4] - 38:7, 61:14, 70:16, 127:13
grand [2] - 72:1, 72:14	harmed [2] - 29:9, 29:22	head [1] - 116:16	identity-theft [1] - 62:22	included [2] - 97:3, 117:17
grant [1] - 85:8	HEARD [1] - 1:14	healthcare [1] - 75:13	ignore [1] - 55:14	Includes [1] - 107:23
granted [1] - 24:25	heard [6] - 23:25, 75:10, 119:25, 138:5, 140:5, 140:7	hear [4] - 10:4, 14:17, 21:19, 64:13	illegal [2] - 86:8, 87:1	includes [1] - 68:14
gray [5] - 45:10, 48:21, 107:22, 109:21, 112:20	hearing [4] - 73:10, 85:2, 119:13, 136:16	HEARD [1] - 1:14	illuminates [1] - 30:14	including [5] - 43:13, 51:23, 61:16, 69:24, 86:19
grayed [2] - 106:18, 109:9	hears [1] - 61:13	HEARD [1] - 1:14	imagine [1] - 55:20	inclusion [1] - 31:15
grayed-out [2] - 106:18, 109:9	heavily [1] - 67:20	HEARD [1] - 1:14	immediately [4] - 6:12, 85:22, 128:7, 128:11	income [6] - 19:25, 30:21, 31:8, 80:2, 80:24, 97:20
grayer [1] - 96:22	Hebrew [1] - 115:16	HEARD [1] - 1:14	immunity [3] - 67:2, 67:3, 67:6	incomes [1] - 35:24
great [7] - 39:20, 39:25, 40:11, 55:24, 88:9, 102:3, 138:4	held [1] - 62:4	HEARD [1] - 1:14	impact [1] - 91:15	incomplete [1] - 32:25
greater [1] - 40:22	help [14] - 21:19, 33:4, 72:8, 98:1, 100:9, 100:10, 100:22, 101:17, 106:1, 120:21, 131:9, 132:12, 132:21, 132:23	HEARD [1] - 1:14	impeccable [1] - 56:9	incorrect [1] - 55:11
greatest [2] - 14:16, 40:5	helpful [5] - 68:19, 89:14, 130:3, 133:13, 139:9	HEARD [1] - 1:14	impermissible [1] - 76:19	increased [2] - 26:2, 26:3
green [3] - 106:5, 106:17, 109:19	helps [2] - 53:2, 53:4	HEARD [1] - 1:14	impervious [1] - 26:18	independently [2] - 52:22, 137:23
Gregory [1] - 5:9	hereby [1] - 140:3	HEARD [1] - 1:14	implement [2] - 53:21, 127:1	indicate [1] - 108:2
GREGORY [1] - 1:4	hereby [1] - 140:3	HEARD [1] - 1:14	implementation [6] - 54:3, 125:25, 127:16, 127:19, 129:22, 136:22	indicated [1] - 85:4
grew [1] - 74:11	helpful [5] - 68:19, 89:14, 130:3, 133:13, 139:9	HEARD [1] - 1:14	implication [1] - 50:24	indicia [1] - 31:13
group [1] - 95:16	helps [2] - 53:2, 53:4	HEARD [1] - 1:14	important [17] - 7:14, 14:8, 14:17, 45:15, 48:23, 63:12, 65:20, 69:10, 80:14, 85:25, 89:22, 96:5, 101:1, 101:21, 106:8, 107:19, 135:2	indirectly [1] - 33:12
GROUP [1] - 1:10	hereby [1] - 140:3	HEARD [1] - 1:14	importantly [4] - 88:6, 91:20, 99:13, 120:9	individual [8] - 19:24, 45:8, 45:10, 66:5, 79:10, 81:22, 85:24, 108:2
groups [1] - 56:5	helpful [5] - 68:19, 89:14, 130:3, 133:13, 139:9	HEARD [1] - 1:14	imposing [1] - 43:1	individual's [1] - 13:19
guess [5] - 20:13, 79:23, 91:19, 104:24, 107:18	hereby [1] - 140:3	HEARD [1] - 1:14	inaccuracy [1] - 62:23	individuals [15] - 13:19, 15:10, 15:23, 18:11, 21:5, 29:16, 38:21, 40:25, 56:20, 62:19, 62:20, 62:21, 63:6, 138:13
guidance [1] - 98:1	hide [1] - 133:1	hours [3] - 8:1, 91:10, 111:23	inaccurate [3] - 38:3, 54:20, 55:6	industry [5] - 14:2, 45:19, 81:9, 90:8, 94:22
guide [3] - 98:25, 100:22, 109:15	high [3] - 53:6, 54:4, 56:4	house [3] - 19:23, 20:1, 80:23	inactive [3] - 114:9, 114:12, 114:15	Inevitably [1] - 59:4
guile [1] - 62:6	highest [1] - 79:18	household [4] - 30:20, 31:8, 97:16, 97:20	inappropriately [1] - 39:15	infinitum [1] - 47:8
gut [1] - 135:9	highlight [2] - 10:3, 61:3	Houston [2] - 2:23, 5:23	inaudible [20] - 5:16, 32:21, 49:18, 51:7, 92:25, 104:8, 108:6, 108:9, 110:1, 111:5, 117:20, 122:13, 124:8, 131:11, 133:18, 134:4, 134:7, 137:3, 137:11, 139:1	inform [1] - 125:12
guy [2] - 31:11, 56:12	highlighted [1] - 124:2	Houston [2] - 2:23, 5:23	Inaudible [26] - 15:5, 51:2, 51:6, 51:12, 52:5, 52:19, 54:7, 55:9, 61:21, 64:19, 70:19, 76:14, 91:20,	informal [1] - 73:18
guys [2] - 121:15, 137:16	hired [1] - 34:19	Houston [2] - 2:23, 5:23		information [97] - 13:16, 13:20, 16:3, 16:4, 16:8, 16:9, 19:19, 19:21, 19:22, 19:23, 20:4, 20:11, 20:15, 20:18, 23:23, 25:20, 30:22, 31:1, 31:7, 31:16, 32:13, 32:17, 32:19, 35:14,
H				
hacked [2] - 82:18, 84:4	historical [1] - 74:20	idea [6] - 6:16, 8:14, 67:5, 113:19,		
hand [2] - 119:13, 140:14	history [9] - 12:24, 17:24, 24:17, 32:23, 39:23, 69:25, 70:1, 87:24, 125:18			
handed [1] - 74:8	hold [1] - 52:14			
handled [1] - 24:16	holding [1] - 7:10			
hands [1] - 7:10	holiday [2] - 27:15, 112:5			
handshake [1] - 129:4	home [5] - 19:20,			
HANNAH [1] - 1:15				

<p>35:18, 37:3, 37:8, 37:21, 39:11, 39:15, 43:15, 43:22, 45:7, 45:9, 45:19, 45:20, 48:3, 48:5, 48:17, 52:7, 52:19, 55:1, 55:10, 55:12, 69:6, 69:18, 71:5, 72:12, 72:13, 72:15, 72:21, 72:25, 73:1, 73:2, 73:5, 73:7, 73:20, 74:20, 74:22, 75:7, 75:13, 75:15, 75:22, 78:5, 78:8, 79:4, 79:7, 79:9, 79:18, 79:21, 80:4, 81:20, 93:21, 96:16, 96:17, 96:21, 97:17, 101:18, 102:6, 102:20, 103:4, 103:9, 107:4, 114:10, 115:1, 116:1, 117:2, 117:11, 120:15, 124:5, 130:3, 130:8, 135:2</p> <p>INFORMATION [1] - 1:9</p> <p>informed [2] - 11:7, 23:23</p> <p>inhouse [1] - 33:9</p> <p>initiated [1] - 71:14</p> <p>initiative [1] - 46:1</p> <p>injunction [2] - 47:25, 48:23</p> <p>injunctive [46] - 15:9, 27:19, 27:23, 35:9, 36:21, 40:10, 40:14, 42:2, 42:11, 42:16, 43:11, 44:24, 45:17, 46:16, 46:17, 47:19, 49:24, 50:8, 51:20, 51:22, 52:20, 55:23, 57:6, 59:11, 60:8, 60:14, 60:22, 64:17, 89:12, 90:5, 90:23, 91:3, 91:6, 92:16, 95:8, 95:10, 102:10, 105:7, 118:19, 119:1, 123:23, 127:1, 131:19, 133:24, 134:14</p> <p>injury [1] - 66:2</p> <p>innovative [1] - 120:8</p> <p>instance [2] - 12:3, 51:1</p> <p>instead [1] - 51:23</p> <p>institutional [1] - 72:4</p> <p>institutions [1] - 72:23</p> <p>instructed [1] - 72:2</p>	<p>insurance [6] - 68:17, 70:9, 71:10, 76:19, 125:20, 125:21</p> <p>intake [1] - 95:16</p> <p>intend [4] - 77:17, 102:17, 106:13, 109:4</p> <p>intended [7] - 16:8, 68:14, 71:4, 71:8, 76:11, 98:16, 100:13</p> <p>intending [1] - 10:20</p> <p>intensive [1] - 127:5</p> <p>intent [2] - 69:7, 77:14</p> <p>interesting [2] - 15:12, 138:9</p> <p>interests [1] - 40:18</p> <p>interface [1] - 91:16</p> <p>internal [1] - 128:23</p> <p>internet [4] - 43:21, 43:24, 60:13, 120:17</p> <p>interpretation [3] - 66:15, 66:17, 67:16</p> <p>interrupt [1] - 65:10</p> <p>interviewed [1] - 34:19</p> <p>introduce [2] - 5:22, 6:12</p> <p>investigated [1] - 8:21</p> <p>investigating [1] - 86:10</p> <p>investigation [1] - 86:18</p> <p>investigative [2] - 86:16, 87:12</p> <p>investment [1] - 91:8</p> <p>involved [7] - 15:18, 33:11, 83:18, 83:21, 83:22, 87:19, 138:13</p> <p>involving [3] - 44:1, 44:3, 87:17</p> <p>IRELAND [1] - 4:20</p> <p>Ireland [1] - 89:19</p> <p>ironed [1] - 13:6</p> <p>irrelevant [1] - 67:19</p> <p>IRVIN [1] - 4:19</p> <p>isolated [1] - 115:1</p> <p>issuance [1] - 38:18</p> <p>issue [22] - 14:15, 15:22, 17:8, 17:20, 24:2, 25:1, 33:21, 34:4, 34:6, 37:17, 46:3, 48:22, 53:8, 66:4, 66:21, 99:15, 101:3, 119:13, 119:22, 120:7, 126:6, 133:15</p>	<p>74:16</p> <p>issues [24] - 8:20, 10:2, 25:6, 63:11, 64:24, 66:5, 68:25, 82:1, 82:7, 90:14, 91:7, 91:24, 92:12, 102:15, 118:5, 118:16, 118:21, 120:3, 120:10, 130:12, 130:14, 131:4, 131:10, 137:24</p> <p>items [3] - 11:17, 23:11, 70:16</p>	<p>136:25, 137:21, 138:22, 140:8</p> <p>JUDGE [1] - 1:15</p> <p>judge [3] - 22:22, 23:6, 42:1</p> <p>judgment [7] - 84:19, 84:25, 85:7, 85:8, 85:11, 85:22, 131:20</p> <p>judicial [1] - 132:21</p> <p>jump [1] - 11:20</p> <p>jumps [1] - 8:16</p> <p>June [3] - 129:10, 129:20, 139:5</p> <p>jurisprudence [2] - 67:6, 67:22</p> <p>jury [3] - 72:1, 72:14, 90:14</p>
		<p>K</p> <p>Kathy [2] - 44:1, 44:2</p> <p>keep [4] - 65:11, 65:13, 82:10, 109:4</p> <p>keeping [1] - 106:12</p> <p>keeps [1] - 47:13</p> <p>kept [1] - 132:20</p> <p>key [10] - 8:4, 22:7, 22:8, 24:19, 24:21, 25:4, 39:10, 39:11, 43:22, 131:18</p> <p>keystroke [1] - 84:14</p> <p>killed [1] - 7:22</p> <p>kind [12] - 8:2, 9:21, 20:10, 25:20, 30:22, 31:1, 32:18, 37:9, 66:3, 83:19, 84:11, 100:18</p> <p>kinds [5] - 11:9, 11:11, 30:8, 70:17, 83:12</p> <p>Kinsella [1] - 44:1</p> <p>knowing [2] - 67:17, 113:8</p> <p>knowledge [2] - 9:2, 140:13</p> <p>known [2] - 74:21</p> <p>knows [3] - 13:2, 28:24, 103:21</p> <p>Kristen [2] - 75:18, 75:23</p> <p>Kristin [1] - 75:16</p>	<p>L</p> <p>L.L.P [2] - 4:4, 4:13</p> <p>lack [1] - 88:1</p> <p>laid [1] - 54:18</p> <p>Lamar [1] - 2:21</p> <p>Land [1] - 2:12</p> <p>language [4] - 67:5, 70:20, 73:15, 97:23</p>

legislative [2] - 45:25, 69:25	liable [1] - 67:7	120:18, 121:3	115:18, 118:16, 122:13, 130:13, 136:15	majority [1] - 19:17
legitimate [1] - 113:17	license [6] - 81:14, 81:15, 81:21, 113:2, 114:9	living [4] - 20:20, 31:11, 39:5, 80:23	Look [3] - 69:3, 83:4, 85:17	management [2] - 27:13, 93:20
Len [12] - 6:16, 12:21, 12:22, 13:1, 48:10, 79:5, 88:21, 90:19, 94:16, 127:19, 137:13	licenses [6] - 35:25, 80:1, 97:3, 112:15, 112:21	LN [3] - 68:1, 77:5, 78:4	looked [6] - 23:14, 61:23, 82:21, 92:16, 112:25, 118:4	mandated [1] - 127:9
len [1] - 114:17	licensing [1] - 71:12	locate [51] - 20:6, 20:8, 20:9, 30:3, 30:25, 31:22, 32:3, 35:18, 35:23, 38:5, 45:5, 45:8, 73:4, 73:25, 75:3, 77:9, 80:1, 93:13, 95:7, 95:18, 96:1, 96:6, 96:13, 96:23, 97:1, 97:9, 97:12, 97:13, 97:18, 97:25, 99:13, 99:19, 100:2, 101:18, 105:11, 105:12, 109:6, 111:12, 113:25, 115:19, 116:19, 116:22, 117:17, 118:12, 118:14, 119:3, 119:6, 121:20, 124:24, 128:9	looking [14] - 22:22, 23:6, 23:7, 36:2, 72:4, 75:16, 77:3, 80:21, 97:24, 105:7, 113:4, 119:17, 127:17, 127:23	mandatory [1] - 55:9
length [1] - 88:9	liens [1] - 87:21	looks [6] - 48:5, 100:1, 105:5, 107:18, 111:9, 111:13	loose [1] - 59:22	manner [5] - 19:13, 24:10, 26:22, 37:25, 39:12
LEONARD [1] - 2:3	lieu [1] - 66:9	Lorie [1] - 139:7	Market [1] - 4:14	
Leonard [6] - 5:11, 48:9, 48:10, 79:6	light [3] - 52:15, 63:14, 69:8	lose [1] - 59:5	marketing [4] - 54:4, 80:16, 105:12, 105:21	
less [3] - 8:15, 63:12, 130:22	likelihood [1] - 87:10	Louis [1] - 50:10	marketplace [1] - 46:8	
letter [5] - 83:2, 83:8, 85:10, 85:14, 86:3	likely [8] - 8:17, 31:14, 38:21, 48:12, 74:15, 74:21, 81:15, 130:12	love [1] - 11:9	MARY [1] - 3:17	
letters [2] - 28:7, 73:18	likewise [1] - 119:23	loved [1] - 70:25	mask [1] - 109:15	
letting [1] - 127:3	limitation [1] - 59:18	low [1] - 54:2	material [1] - 15:4	
level [1] - 20:2	limitations [1] - 93:15	Lube [4] - 82:5, 86:1, 88:17, 91:20	materials [3] - 9:19, 103:6, 123:16	
levels [2] - 32:5, 34:9	limited [3] - 45:3, 70:5, 91:23	lucky [1] - 132:7	matter [9] - 12:4, 12:5, 28:1, 46:4, 59:22, 61:25, 64:13, 106:11, 109:11	
lexis [1] - 64:14	line [8] - 48:21, 73:25, 75:17, 77:24, 112:20, 114:8, 115:7, 128:21	Ludlow [1] - 4:22	MATTHEW [1] - 3:10	
LEXIS [1] - 1:8	linear [1] - 51:8	lump [2] - 19:13, 36:25	maximum [2] - 54:9, 54:14	
LexisNexis [80] - 5:10, 13:10, 13:14, 13:15, 13:16, 13:25, 14:6, 15:1, 15:14, 15:19, 15:25, 16:2, 16:13, 16:21, 17:7, 18:13, 19:3, 19:16, 21:7, 24:21, 25:12, 25:14, 26:1, 27:12, 28:12, 28:17, 29:21, 29:23, 30:7, 30:13, 33:8, 35:13, 37:2, 37:19, 38:16, 38:20, 39:13, 39:14, 42:8, 42:23, 43:4, 43:7, 44:11, 45:11, 46:7, 46:20, 48:4, 49:20, 51:2, 52:13, 53:19, 54:15, 55:4, 55:6, 55:11, 56:22, 57:1, 57:21, 58:18, 59:9, 59:10, 59:19, 59:25, 64:10, 64:11, 66:6, 68:3, 88:8, 89:19, 90:18, 102:19, 108:12, 112:21, 114:6, 117:23, 119:2, 123:2, 125:18, 125:21	located [2] - 19:24, 113:12	lying [1] - 88:22	McCABE [1] - 64:9	
lexisNexis [1] - 82:20	lingered [1] - 132:10	located [1] - 114:11	McCabe [47] - 4:12, 5:13, 6:14, 6:19, 14:6, 26:5, 27:16, 27:17, 32:22, 39:19, 39:24, 48:15, 56:18, 63:20, 64:7, 64:9, 65:9, 65:13, 65:17, 66:21, 70:24, 71:3, 73:9, 73:12, 77:11, 77:15, 77:23, 78:4, 78:13, 78:25, 79:13, 80:3, 80:7, 80:9, 82:3, 83:20, 83:22, 84:1, 84:9, 84:11, 84:14, 84:16, 84:23, 88:13, 89:1, 101:13, 135:22	
LexisNexis' [6] - 14:18, 21:2, 32:22, 36:18, 39:19, 91:15	link [1] - 122:9	locating [1] - 92:24	McGrady [2] - 75:16, 75:23	
liability [6] - 66:8, 67:9, 67:10, 67:11, 99:24, 100:3	list [5] - 11:16, 79:7, 84:7, 121:7, 126:15	location [2] - 20:6, 20:15	McGradys [1] - 75:19	
	listed [1] - 127:2	locations [1] - 75:8	mean [32] - 6:19, 12:5, 14:9, 26:16, 28:6, 28:18, 28:20, 39:20, 41:16, 42:23, 43:3, 49:22, 52:1, 57:3, 58:1, 58:2, 77:8, 77:13, 78:3, 78:21, 83:17, 84:11, 90:3	
	listener [1] - 65:15	locator [2] - 31:17, 110:19		
	lists [1] - 68:16	lock [1] - 100:17		
	literally [3] - 13:20, 44:3, 75:1	locked [2] - 47:8, 100:23		
	litigant [1] - 48:16	logic [1] - 79:24		
	litigants [1] - 40:14	logical [1] - 115:15		
	litigated [5] - 40:9, 52:13, 67:24, 67:25, 86:6	logically [1] - 71:18		
	litigating [1] - 63:11	login [1] - 105:10		
	Litigation [1] - 2:4	logistical [1] - 130:6		
	LITIGATION [2] - 3:11, 3:18	logs [1] - 97:25		
	litigation [16] - 5:25, 7:7, 14:7, 24:9, 34:15, 40:9, 40:19, 41:6, 41:7, 41:8, 42:21, 42:23, 54:25, 59:20, 70:3, 81:25	logue [1] - 11:24		
	Litigations [1] - 140:5	longest [1] - 42:18		
	live [6] - 74:10, 75:24, 75:25, 76:7, 76:9, 113:9	look [37] - 14:12, 27:9, 27:25, 30:7, 32:25, 33:1, 35:10, 35:22, 53:10, 53:18, 70:15, 75:17, 80:19, 90:4, 90:11, 90:13, 90:17, 91:5, 91:22, 92:6, 100:8, 104:24, 105:4, 107:21,		
	lives [7] - 19:24, 75:24, 75:25, 113:19, 113:21,	109:14, 110:7, 110:18, 111:7, 111:17, 111:19,		

<p>94:16, 103:20, 116:1, 123:5, 131:14, 133:7, 134:2, 134:10, 138:4 meaning [2] - 49:21, 83:14 means [6] - 69:4, 88:23, 97:22, 113:21, 120:20, 129:8 meant [8] - 26:18, 85:4, 85:5, 85:6, 95:21, 100:21, 100:22, 103:8 meantime [1] - 22:21 mechanics [1] - 63:11 mechanism [2] - 44:22, 102:18 mechanisms [1] - 120:7 median [11] - 19:25, 20:1, 20:2, 30:20, 30:21, 31:8, 31:9, 35:24, 80:2, 97:16, 97:19 mediate [2] - 34:20, 34:25 mediated [1] - 35:4 mediating [1] - 34:22 mediation [3] - 18:7, 33:18, 35:6 mediator [1] - 34:17 meet [6] - 22:24, 27:16, 92:2, 92:20, 93:11, 118:8 meeting [9] - 27:12, 33:7, 33:8, 33:16, 33:17, 33:25, 34:10 meetings [1] - 34:16 meets [1] - 90:16 member [5] - 58:17, 103:1, 103:17, 103:21, 138:24 members [7] - 44:4, 48:24, 56:24, 57:11, 75:8, 102:21, 132:6 members' [1] - 11:7 memo [1] - 27:2 mention [3] - 53:7, 57:16, 59:3 mentioned [13] - 12:21, 34:4, 50:3, 67:20, 71:11, 71:14, 71:17, 84:8, 84:18, 98:18, 100:14, 107:20, 118:13 mentioning [1] - 40:22 mere [1] - 20:5 merely [3] - 25:15, 25:16, 67:16</p>	<p>mesh [1] - 122:16 met [5] - 7:16, 32:23, 33:6, 35:4, 42:1 method [2] - 12:7, 51:16 methods [1] - 98:24 Michael [1] - 5:12 MICHAEL [1] - 2:19 middle [3] - 30:16, 72:24, 107:21 Midland [1] - 94:5 midst [1] - 124:25 might [27] - 10:7, 10:8, 11:5, 11:8, 11:10, 12:4, 29:12, 32:24, 33:3, 40:7, 49:16, 65:2, 75:18, 81:17, 89:7, 95:3, 99:5, 106:13, 113:3, 115:2, 118:12, 120:3, 120:16, 122:12, 127:20, 133:9 migrate [2] - 128:8, 128:14 migrated [1] - 128:16 Mike [4] - 12:19, 96:14, 118:13, 127:20 million [11] - 40:23, 50:7, 50:14, 50:22, 52:18, 53:21, 53:23, 53:25, 60:5, 91:9 millions [4] - 44:3, 46:20, 53:13, 136:11 mind [4] - 30:23, 82:10, 111:16, 131:25 mine [1] - 65:11 minimize [2] - 90:20, 132:3 minimum [1] - 44:9 minute [3] - 18:24, 92:25, 121:6 minutes [4] - 15:11, 64:18, 89:24, 89:25 mired [1] - 137:25 missing [3] - 8:12, 33:2, 50:1 mistake [1] - 68:3 misunderstand [1] - 34:7 misunderstanding [1] - 16:12 misunderstood [1] - 85:5 mixed [1] - 37:17 mock [2] - 111:15, 122:12 mock-up [2] - 111:15,</p>	<p>122:12 mocked [1] - 111:24 mocking [1] - 122:17 mode [2] - 20:20, 39:5 modeled [1] - 121:22 modest [1] - 21:4 modesty [1] - 13:1 modified [1] - 33:13 modifies [1] - 69:22 modify [1] - 36:22 module [1] - 99:9 moment [5] - 25:24, 52:13, 86:24, 101:2, 133:10 Monday [2] - 1:17, 140:9 monetary [12] - 15:10, 35:9, 37:12, 42:14, 51:22, 52:5, 52:21, 56:14, 56:19, 59:11, 59:15, 60:3 monetize [2] - 52:3, 52:5 monetized [2] - 52:6, 53:20 monetizing [1] - 55:15 money [7] - 31:12, 31:14, 41:1, 52:16, 52:25, 80:22, 115:3 million [11] - 40:23, 50:7, 50:14, 50:22, 52:18, 53:21, 53:23, 53:25, 60:5, 91:9 millions [4] - 44:3, 46:20, 53:13, 136:11 mind [4] - 30:23, 82:10, 111:16, 131:25 mine [1] - 65:11 minimize [2] - 90:20, 132:3 minimum [1] - 44:9 minute [3] - 18:24, 92:25, 121:6 minutes [4] - 15:11, 64:18, 89:24, 89:25 mired [1] - 137:25 missing [3] - 8:12, 33:2, 50:1 mistake [1] - 68:3 misunderstand [1] - 34:7 misunderstanding [1] - 16:12 misunderstood [1] - 85:5 mixed [1] - 37:17 mock [2] - 111:15, 122:12 mock-up [2] - 111:15,</p>	<p>116:20, 127:22 MR [28] - 5:16, 5:21, 6:10, 6:24, 7:20, 8:23, 9:17, 9:25, 10:11, 11:2, 11:15, 11:19, 11:23, 11:25, 11:27, 12:1, 12:15, 12:17, 12:19, 12:21, 12:23, 12:25, 12:27, 12:29, 12:31, 12:33, 12:35, 12:37, 12:39, 12:41, 12:43, 12:45, 12:47, 12:49, 12:51, 12:53, 12:55, 12:57, 12:59, 12:61, 12:63, 12:65, 12:67, 12:69, 12:71, 12:73, 12:75, 12:77, 12:79, 12:81, 12:83, 12:85, 12:87, 12:89, 12:91, 12:93, 12:95, 12:97, 12:99, 12:101, 12:103, 12:105, 12:107, 12:109, 12:111, 12:113, 12:115, 12:117, 12:119, 12:121, 12:123, 12:125, 12:127, 12:129, 12:131, 12:133, 12:135, 12:137, 12:139, 12:141, 12:143, 12:145, 12:147, 12:149, 12:151, 12:153, 12:155, 12:157, 12:159, 12:161, 12:163, 12:165, 12:167, 12:169, 12:171, 12:173, 12:175, 12:177, 12:179, 12:181, 12:183, 12:185, 12:187, 12:189, 12:191, 12:193, 12:195, 12:197, 12:199, 12:201, 12:203, 12:205, 12:207, 12:209, 12:211, 12:213, 12:215, 12:217, 12:219, 12:221, 12:223, 12:225, 12:227, 12:229, 12:231, 12:233, 12:235, 12:237, 12:239, 12:241, 12:243, 12:245, 12:247, 12:249, 12:251, 12:253, 12:255, 12:257, 12:259, 12:261, 12:263, 12:265, 12:267, 12:269, 12:271, 12:273, 12:275, 12:277, 12:279, 12:281, 12:283, 12:285, 12:287, 12:289, 12:291, 12:293, 12:295, 12:297, 12:299, 12:301, 12:303, 12:305, 12:307, 12:309, 12:311, 12:313, 12:315, 12:317, 12:319, 12:321, 12:323, 12:325, 12:327, 12:329, 12:331, 12:333, 12:335, 12:337, 12:339, 12:341, 12:343, 12:345, 12:347, 12:349, 12:351, 12:353, 12:355, 12:357, 12:359, 12:361, 12:363, 12:365, 12:367, 12:369, 12:371, 12:373, 12:375, 12:377, 12:379, 12:381, 12:383, 12:385, 12:387, 12:389, 12:391, 12:393, 12:395, 12:397, 12:399, 12:401, 12:403, 12:405, 12:407, 12:409, 12:411, 12:413, 12:415, 12:417, 12:419, 12:421, 12:423, 12:425, 12:427, 12:429, 12:431, 12:433, 12:435, 12:437, 12:439, 12:441, 12:443, 12:445, 12:447, 12:449, 12:451, 12:453, 12:455, 12:457, 12:459, 12:461, 12:463, 12:465, 12:467, 12:469, 12:471, 12:473, 12:475, 12:477, 12:479, 12:481, 12:483, 12:485, 12:487, 12:489, 12:491, 12:493, 12:495, 12:497, 12:499, 12:501, 12:503, 12:505, 12:507, 12:509, 12:511, 12:513, 12:515, 12:517, 12:519, 12:521, 12:523, 12:525, 12:527, 12:529, 12:531, 12:533, 12:535, 12:537, 12:539, 12:541, 12:543, 12:545, 12:547, 12:549, 12:551, 12:553, 12:555, 12:557, 12:559, 12:561, 12:563, 12:565, 12:567, 12:569, 12:571, 12:573, 12:575, 12:577, 12:579, 12:581, 12:583, 12:585, 12:587, 12:589, 12:591, 12:593, 12:595, 12:597, 12:599, 12:601, 12:603, 12:605, 12:607, 12:609, 12:611, 12:613, 12:615, 12:617, 12:619, 12:621, 12:623, 12:625, 12:627, 12:629, 12:631, 12:633, 12:635, 12:637, 12:639, 12:641, 12:643, 12:645, 12:647, 12:649, 12:651, 12:65</p>
---	--	--	---

<p>N</p> <p>name [5] - 20:9, 79:16, 81:17, 105:12, 122:1 named [2] - 57:10, 119:24 names [3] - 19:19, 57:17, 138:7 Nancy [1] - 33:9 Nash [1] - 33:9 national [2] - 5:24, 56:4 nature [8] - 10:21, 19:21, 20:19, 28:21, 35:15, 43:25, 103:16, 123:10 navigation [1] - 99:7 navigational [1] - 109:15 Neal [1] - 50:9 NEAL [1] - 4:3 necessarily [6] - 78:6, 80:1, 104:12, 108:18, 126:17, 130:17 necessary [5] - 20:25, 45:8, 76:2, 108:13, 125:23 need [25] - 10:3, 11:20, 13:7, 13:9, 26:10, 27:21, 35:17, 35:24, 78:1, 79:25, 80:2, 95:17, 98:22, 105:19, 108:18, 114:25, 128:16, 128:17, 128:18, 128:19, 129:1, 129:16, 134:19, 138:4, 139:6 needed [1] - 17:8 needle [1] - 26:4 needs [3] - 61:19, 131:3, 131:8 negligence [1] - 62:9 negligent [3] - 65:24, 65:25, 66:2 negligently [1] - 67:12 negotiate [4] - 10:15, 10:16, 38:10, 42:15 negotiated [6] - 40:16, 50:16, 52:16, 52:22, 57:7, 89:6 negotiating [3] - 58:17, 123:9, 124:25 negotiation [2] - 99:12, 100:9 negotiations [4] - 47:20, 96:24, 118:3, 118:18 neighborhood [6] -</p>	<p>19:23, 19:25, 20:2, 20:3, 31:11, 113:20 never [7] - 28:24, 34:24, 42:1, 42:2, 42:3, 111:16, 137:15 nevertheless [1] - 10:14 New [2] - 27:12, 34:22 new [16] - 50:5, 77:24, 91:17, 99:7, 100:8, 107:3, 107:5, 109:5, 110:18, 111:11, 127:4, 128:6, 128:7, 128:8, 137:8 Newport [4] - 2:7, 3:21, 33:9, 79:6 News [4] - 2:7, 3:21, 33:9, 79:6 NEXIS [1] - 1:8 next [12] - 13:4, 13:10, 28:10, 37:19, 53:14, 107:7, 107:16, 108:7, 110:18, 122:15, 122:25, 129:6 night [1] - 88:22 nine [1] - 68:21 Nineteenth [1] - 2:14 no-longer-available-to-collections [1] - 116:24 non [6] - 52:6, 68:4, 95:4, 96:13, 115:20 non-billable [1] - 95:4 non-consumer [2] - 68:4, 115:20 non-defaulted [1] - 95:4 non-FCRA [1] - 96:13 non-monetized [1] - 52:6 noncompliance [1] - 44:23 none [3] - 40:25, 70:13, 100:19 nonetheless [4] - 43:5, 43:19, 87:2, 89:5 nongovernmental [2] - 36:11, 49:21 normally [2] - 125:11, 129:5 North [1] - 4:22 notarial [1] - 140:14 Notary [1] - 140:21 note [2] - 44:25, 107:19 nothing [11] - 8:16, 29:4, 51:21, 51:24, 59:8, 62:10, 70:12,</p>	<p>71:22, 72:1, 107:5, 135:13 notice [37] - 11:4, 11:6, 15:22, 25:14, 25:15, 37:4, 37:6, 37:9, 41:16, 43:17, 43:19, 43:20, 43:21, 44:4, 44:9, 57:12, 58:2, 58:3, 59:11, 59:12, 60:1, 60:9, 60:11, 60:22, 60:25, 102:1, 102:8, 104:1, 104:12, 104:16, 134:19, 134:20, 136:6, 136:7, 136:8, 136:11 noticed [2] - 33:23, 45:25 notification [1] - 104:14 notifying [1] - 125:2 November [1] - 43:15 number [28] - 20:10, 32:14, 43:6, 57:18, 63:8, 68:16, 68:24, 70:11, 73:16, 75:4, 76:7, 79:16, 82:16, 88:7, 119:11, 119:16, 119:18, 119:22, 120:13, 120:18, 121:5, 121:8, 121:9, 121:10, 122:18, 122:21, 125:22, 128:16 Number [4] - 1:6, 54:8, 115:7, 121:2 numbers [4] - 19:19, 19:20, 20:10, 87:3 numerous [1] - 7:21 nurse [1] - 113:18 nuts [1] - 8:3</p> <p>O</p> <p>Oakland [4] - 34:19, 34:24, 35:1, 35:3 objected [1] - 51:21 objecting [1] - 83:3 objective [5] - 7:18, 41:19, 42:12, 67:18, 132:13 objectively [2] - 66:15, 66:17 objectors [2] - 102:3, 132:8 obligated [2] - 60:10, 118:20 obligations [2] - 65:19, 106:8</p> <p>observe [1] - 54:16 obstinate [1] - 10:19 obtained [1] - 124:9 obvious [1] - 42:22 obviously [23] - 6:11, 8:17, 21:22, 22:19, 23:23, 25:1, 25:12, 25:15, 25:16, 26:2, 26:25, 33:23, 36:8, 36:9, 37:4, 37:5, 37:22, 39:6, 44:4, 47:19, 50:11, 51:8, 53:7, 54:8, 56:10, 57:16, 57:19, 57:24, 59:10, 66:1,</p>
--	--	--

<p>otherwise [6] - 27:14, 51:11, 61:16, 63:14, 68:2, 118:20</p> <p>oton [3] - 62:23, 62:25, 63:1</p> <p>Oton [1] - 62:23</p> <p>ought [3] - 92:3, 97:8, 102:7</p> <p>outcome [2] - 40:10, 88:14</p> <p>outliers [1] - 20:12</p> <p>outline [1] - 52:2</p> <p>outlines [1] - 62:12</p> <p>outmoded [1] - 94:6</p> <p>output [1] - 48:9</p> <p>outrageously [1] - 53:6</p> <p>outside [2] - 27:17, 103:6</p> <p>outstanding [1] - 55:24</p> <p>overall [1] - 38:11</p> <p>overlays [1] - 117:14</p> <p>overly [1] - 137:18</p> <p>overseen [1] - 44:1</p> <p>overtime [1] - 112:6</p> <p>overview [2] - 6:17, 24:17</p> <p>overwhelming [1] - 43:2</p> <p>owes [2] - 119:19, 120:1</p> <p>own [6] - 55:21, 94:7, 95:2, 128:22, 129:3</p> <p>ownership [1] - 111:4</p> <p>owns [1] - 81:18</p>	<p>paperwork [2] - 7:23, 14:25</p> <p>paragraph [1] - 42:13</p> <p>part [18] - 6:21, 8:7, 24:25, 27:25, 28:16, 31:20, 36:13, 38:10, 40:22, 46:14, 81:21, 87:21, 88:4, 98:16, 113:18</p> <p>parties [6] - 9:13, 28:7, 47:24, 95:2, 102:1, 121:20</p> <p>parts [5] - 6:21, 36:15, 48:16, 111:13, 126:8</p> <p>party [4] - 94:3, 94:15, 95:15</p> <p>passive [1] - 49:7</p> <p>password [1] - 84:5</p> <p>patient [1] - 139:3</p> <p>pause [1] - 135:14</p> <p>pay [6] - 31:2, 32:5, 47:20, 52:18, 113:12, 115:3</p> <p>paying [1] - 113:17</p> <p>payment [1] - 72:10</p> <p>payments [1] - 56:23</p> <p>Payne [2] - 15:18, 62:6</p> <p>Payne's [1] - 22:18</p> <p>pays [1] - 104:6</p> <p>pejorative [1] - 28:21</p> <p>penalties [5] - 42:25, 67:13, 83:4, 83:10, 83:13</p> <p>pending [1] - 19:1</p> <p>Pennsylvania [3] - 2:15, 6:3, 87:23</p> <p>P.O [1] - 4:7</p> <p>package [2] - 13:16, 27:24</p> <p>Page [1] - 27:2</p> <p>page [8] - 30:16, 76:13, 76:23, 106:25, 107:18, 107:21, 110:18, 125:10</p> <p>pages [1] - 122:11</p> <p>paid [1] - 52:16</p> <p>paper [5] - 6:7, 8:19, 35:20, 102:17, 128:19</p> <p>papers [4] - 9:8, 14:23, 16:6, 132:15</p>	<p>Pepsi [1] - 42:7</p> <p>per [2] - 51:5, 57:10</p> <p>perceived [1] - 100:23</p> <p>percent [7] - 26:4, 26:6, 26:8, 44:8, 57:2, 57:3, 57:10</p> <p>percentage [1] - 53:3</p> <p>perfect [2] - 24:6, 37:14</p> <p>performed [1] - 94:8</p> <p>perhaps [5] - 9:22, 15:7, 18:23, 26:3, 132:24</p> <p>period [8] - 13:23, 49:14, 98:12, 102:12, 107:18, 136:9, 137:5</p> <p>periods [2] - 42:18, 62:7</p> <p>permissible [7] - 25:18, 70:12, 86:12, 93:5, 107:12, 117:18</p> <p>permits [1] - 69:13</p> <p>permitted [5] - 45:17, 96:7, 96:19, 100:25, 123:7</p> <p>pernicious [1] - 28:21</p> <p>person [34] - 30:11, 32:7, 32:8, 38:4, 38:12, 38:13, 40:7, 45:4, 46:13, 48:11, 49:2, 73:3, 74:4, 74:8, 74:13, 74:16, 74:17, 76:6, 79:11, 79:15, 81:19, 87:11, 107:16, 108:1, 108:6, 109:6, 113:19, 113:24, 119:18, 133:3, 135:5</p> <p>person-finder [1] - 79:15</p> <p>person-search [1] - 107:16</p> <p>personal [2] - 39:5, 74:5</p> <p>personally [2] - 138:9, 138:23</p> <p>personnel [1] - 73:2</p> <p>persons [1] - 43:12</p> <p>perspective [9] - 14:7, 14:18, 19:15, 25:11, 25:12, 39:11, 47:4, 64:18, 113:11</p> <p>Petersburg [1] - 3:6</p> <p>petition [2] - 52:12, 52:17</p> <p>ph [4] - 62:23, 83:19, 85:4, 90:21</p>	<p>ph. [1] - 62:23</p> <p>pharmacist [5] - 113:2, 113:9, 113:17, 113:18, 113:21</p> <p>Philadelphia [6] - 2:15, 6:2, 17:18, 33:16, 33:17, 33:18, 33:19, 33:20, 33:21, 33:22, 33:23, 33:24, 33:25, 33:26, 33:27, 33:28, 33:29, 33:30, 33:31, 33:32, 33:33, 33:34, 33:35, 33:36, 33:37, 33:38, 33:39, 33:40, 33:41, 33:42, 33:43, 33:44, 33:45, 33:46, 33:47, 33:48, 33:49, 33:50, 33:51, 33:52, 33:53, 33:54, 33:55, 33:56, 33:57, 33:58, 33:59, 33:60, 33:61, 33:62, 33:63, 33:64, 33:65, 33:66, 33:67, 33:68, 33:69, 33:70, 33:71, 33:72, 33:73, 33:74, 33:75, 33:76, 33:77, 33:78, 33:79, 33:80, 33:81, 33:82, 33:83, 33:84, 33:85, 33:86, 33:87, 33:88, 33:89, 33:90, 33:91, 33:92, 33:93, 33:94, 33:95, 33:96, 33:97, 33:98, 33:99, 33:100, 33:101, 33:102, 33:103, 33:104, 33:105, 33:106, 33:107, 33:108, 33:109, 33:110, 33:111, 33:112, 33:113, 33:114, 33:115, 33:116, 33:117, 33:118, 33:119, 33:120, 33:121, 33:122, 33:123, 33:124, 33:125, 33:126, 33:127, 33:128, 33:129, 33:130, 33:131, 33:132, 33:133, 33:134, 33:135, 33:136, 33:137, 33:138, 33:139, 33:140, 33:141, 33:142, 33:143, 33:144, 33:145, 33:146, 33:147, 33:148, 33:149, 33:150, 33:151, 33:152, 33:153, 33:154, 33:155, 33:156, 33:157, 33:158, 33:159, 33:160, 33:161, 33:162, 33:163, 33:164, 33:165, 33:166, 33:167, 33:168, 33:169, 33:170, 33:171, 33:172, 33:173, 33:174, 33:175, 33:176, 33:177, 33:178, 33:179, 33:180, 33:181, 33:182, 33:183, 33:184, 33:185, 33:186, 33:187, 33:188, 33:189, 33:190, 33:191, 33:192, 33:193, 33:194, 33:195, 33:196, 33:197, 33:198, 33:199, 33:200, 33:201, 33:202, 33:203, 33:204, 33:205, 33:206, 33:207, 33:208, 33:209, 33:210, 33:211, 33:212, 33:213, 33:214, 33:215, 33:216, 33:217, 33:218, 33:219, 33:220, 33:221, 33:222, 33:223, 33:224, 33:225, 33:226, 33:227, 33:228, 33:229, 33:230, 33:231, 33:232, 33:233, 33:234, 33:235, 33:236, 33:237, 33:238, 33:239, 33:240, 33:241, 33:242, 33:243, 33:244, 33:245, 33:246, 33:247, 33:248, 33:249, 33:250, 33:251, 33:252, 33:253, 33:254, 33:255, 33:256, 33:257, 33:258, 33:259, 33:260, 33:261, 33:262, 33:263, 33:264, 33:265, 33:266, 33:267, 33:268, 33:269, 33:270, 33:271, 33:272, 33:273, 33:274, 33:275, 33:276, 33:277, 33:278, 33:279, 33:280, 33:281, 33:282, 33:283, 33:284, 33:285, 33:286, 33:287, 33:288, 33:289, 33:290, 33:291, 33:292, 33:293, 33:294, 33:295, 33:296, 33:297, 33:298, 33:299, 33:300, 33:301, 33:302, 33:303, 33:304, 33:305, 33:306, 33:307, 33:308, 33:309, 33:310, 33:311, 33:312, 33:313, 33:314, 33:315, 33:316, 33:317, 33:318, 33:319, 33:320, 33:321, 33:322, 33:323, 33:324, 33:325, 33:326, 33:327, 33:328, 33:329, 33:330, 33:331, 33:332, 33:333, 33:334, 33:335, 33:336, 33:337, 33:338, 33:339, 33:340, 33:341, 33:342, 33:343, 33:344, 33:345, 33:346, 33:347, 33:348, 33:349, 33:350, 33:351, 33:352, 33:353, 33:354, 33:355, 33:356, 33:357, 33:358, 33:359, 33:360, 33:361, 33:362, 33:363, 33:364, 33:365, 33:366, 33:367, 33:368, 33:369, 33:370, 33:371, 33:372, 33:373, 33:374, 33:375, 33:376, 33:377, 33:378, 33:379, 33:380, 33:381, 33:382, 33:383, 33:384, 33:385, 33:386, 33:387, 33:388, 33:389, 33:390, 33:391, 33:392, 33:393, 33:394, 33:395, 33:396, 33:397, 33:398, 33:399, 33:400, 33:401, 33:402, 33:403, 33:404, 33:405, 33:406, 33:407, 33:408, 33:409, 33:410, 33:411, 33:412, 33:413, 33:414, 33:415, 33:416, 33:417, 33:418, 33:419, 33:420, 33:421, 33:422, 33:423, 33:424, 33:425, 33:426, 33:427, 33:428, 33:429, 33:430, 33:431, 33:432, 33:433, 33:434, 33:435, 33:436, 33:437, 33:438, 33:439, 33:440, 33:4</p>
---	--	--	---

30:7, 35:20, 35:21, 39:20, 52:11, 70:2, 73:13, 78:10, 85:8	preparing [1] - 41:13 pres [3] - 59:16, 59:18, 59:20 present [4] - 12:7, 35:21, 91:14, 130:18 presentation [14] - 6:6, 6:20, 6:21, 8:2, 14:21, 21:18, 33:13, 33:15, 47:22, 50:5, 76:14, 100:21, 105:3, 129:25 PRESENTATION [1] - 12:18 presentations [2] - 5:19, 26:16 presented [3] - 67:24, 68:25, 74:7 presenting [2] - 135:8, 138:21 President [1] - 46:1 presiding [2] - 5:5, 64:4 presumably [3] - 104:2, 109:11, 124:14 presume [2] - 22:11, 86:23 pretty [7] - 20:12, 20:14, 42:22, 43:5, 56:4, 134:21, 136:10 prevail [2] - 44:15, 87:13 prevent [4] - 74:1, 74:18, 74:23, 103:8 preview [1] - 8:14 previous [1] - 24:9 primary [2] - 103:18, 125:20 principal [1] - 94:4 principals [2] - 48:2, 100:25 prints [2] - 47:22, 111:9 prioritization [1] - 80:10 privacy [3] - 46:2, 56:7, 117:24 Privacy [3] - 117:13, 117:15, 117:22 private [1] - 40:14 privately [1] - 132:11 pro [2] - 56:24, 57:11 problem [13] - 25:20, 28:22, 28:25, 29:8, 30:5, 30:7, 34:14, 68:23, 69:2, 69:10, 84:5, 121:24, 138:1 procedural [4] - 24:16, 44:22, 102:18, 135:18	procedure [1] - 133:2 procedures [1] - 136:22 proceed [4] - 5:15, 5:18, 27:8, 42:11 proceeding [2] - 74:18, 84:20 PROCEEDINGS [1] - 1:14 proceedings [6] - 5:2, 64:1, 139:19, 140:5, 140:11, 140:12 process [27] - 8:19, 9:10, 9:14, 15:17, 16:2, 77:18, 77:21, 77:22, 91:18, 94:10, 98:21, 98:23, 99:7, 99:8, 101:24, 102:25, 103:7, 104:12, 104:17, 113:14, 127:9, 127:12, 132:21, 136:23, 137:19, 137:23, 138:9 procure [1] - 86:9 produces [1] - 19:17 product [46] - 15:1, 15:19, 42:9, 48:14, 49:3, 50:25, 68:12, 74:25, 75:14, 77:2, 77:5, 77:20, 78:1, 78:17, 78:23, 80:14, 92:18, 92:23, 93:13, 93:16, 95:19, 96:7, 98:15, 101:10, 101:12, 103:19, 105:5, 106:3, 107:10, 107:11, 108:13, 108:14, 109:25, 114:21, 114:22, 114:24, 115:20, 125:20, 125:21, 125:23, 126:2, 127:22, 127:24, 128:5, 128:7, 128:12 productive [1] - 97:5 products [15] - 8:9, 16:21, 79:1, 92:19, 97:21, 98:25, 100:8, 107:3, 118:7, 123:7, 124:20, 126:1, 127:4, 128:9, 129:2 professional [3] - 56:11, 112:15 Professor [2] - 55:18, 56:6 professors [1] - 55:21 program [4] - 44:7, 128:10, 134:20,	136:6 programs [1] - 8:9 progress [1] - 33:22 prohibited [1] - 123:7 prologue [1] - 11:25 promise [3] - 89:23, 101:13, 130:7 promised [1] - 34:23 pronounce [1] - 62:24 pronouncements [1] - 87:24 proof [3] - 62:9, 64:20, 82:5 proper [3] - 21:10, 101:9, 132:19 property [11] - 80:20, 87:21, 87:22, 97:4, 97:17, 108:22, 110:9, 110:13, 110:14, 110:19, 111:12 property-locator [1] - 110:19 proposal [4] - 60:19, 60:24, 61:3, 127:18 proposals [1] - 27:19 propose [2] - 102:17, 102:25 proposed [4] - 16:6, 37:24, 38:7, 43:8 proposing [7] - 14:12, 15:7, 31:19, 43:17, 43:19, 90:16, 92:10 prosaic [1] - 38:5 prospect [1] - 66:10 protect [1] - 102:18 Protection [2] - 117:14, 117:16 protective [2] - 102:24, 103:5 prove [1] - 19:5 provide [9] - 20:16, 68:8, 69:22, 97:16, 98:1, 104:21, 106:10, 118:20, 123:15 provided [5] - 6:7, 55:18, 73:6, 96:22, 140:4 providers [1] - 44:5 provides [2] - 43:4, 80:24 providing [3] - 15:22, 20:14, 104:14 provision [2] - 47:5, 47:6 provisions [1] - 108:5 proxy [1] - 38:19 Public [2] - 83:1, 140:21	public [6] - 75:22, 76:4, 97:8, 101:7, 102:11, 102:20 publically [3] - 75:17, 87:9, 117:10 publication [2] - 102:8, 104:16 publicize [1] - 125:6 publicly [1] - 75:15 published [2] - 43:20, 82:25 Puerto [1] - 43:14 pull [3] - 72:7, 86:11, 103:9 punitive [2] - 44:20, 102:21 purchase [1] - 74:18 purchasers [1] - 72:9 purely [1] - 15:9 purple [1] - 122:25 purpose [15] - 16:9, 25:18, 39:17, 68:17, 68:19, 69:12, 69:24, 70:5, 72:13, 74:14, 76:20, 83:25, 93:5, 99:25, 115:4 purposes [17] - 7:25, 16:10, 16:12, 25:23, 68:17, 70:4, 72:19, 72:24, 73:24, 77:1, 84:1, 86:1, 86:12, 86:16, 95:19, 109:12, 117:18 pursue [6] - 12:9, 21:8, 29:1, 31:6, 44:18, 44:19 pursued [3] - 30:2, 37:15, 92:13 push [1] - 48:18 pushes [1] - 126:3 pushing [2] - 112:20, 112:21 put [17] - 8:2, 22:9, 90:5, 91:6, 95:17, 100:7, 100:17, 100:20, 102:14, 118:7, 120:16, 122:18, 127:12, 128:7, 130:15, 131:24, 138:6 putting [3] - 90:3, 111:21, 124:25
		Q		
		qualified [5] - 67:2, 67:3, 67:6, 67:21, 72:18 qualifies [1] - 72:18 qualify [2] - 70:18,		

<p>72:22 quarrel [1] - 39:13 quarter [1] - 129:8 questioned [1] - 77:25 questions [8] - 8:5, 61:9, 61:11, 63:19, 89:11, 105:1, 132:9, 135:23 quick [1] - 89:25 quickly [8] - 9:23, 14:5, 23:11, 35:23, 74:22, 104:21, 108:17, 136:10 quite [5] - 26:5, 55:25, 96:14, 114:20, 138:21</p>	<p>Raether's [2] - 14:21, 43:10 raise [1] - 21:16 raised [9] - 17:20, 91:25, 97:15, 118:5, 118:17, 118:22, 120:10, 122:7, 130:12 ran [1] - 108:1 random [3] - 74:12, 84:11, 120:16 Randy [1] - 34:25 range [3] - 62:18, 78:25, 79:20 ranged [1] - 84:6 rapidly [1] - 41:13 rata [2] - 56:24, 57:11 rather [5] - 26:21, 49:9, 65:10, 95:22, 117:23 re [2] - 57:23, 57:24 re-mailing [2] - 57:23, 57:24 reached [4] - 23:8, 23:18, 23:19, 57:4 reaching [1] - 22:21 reaction [1] - 11:7 read [14] - 10:9, 14:11, 15:4, 24:6, 35:14, 35:19, 35:20, 66:22, 69:3, 69:21, 71:3, 83:17, 138:5, 139:4 reading [2] - 55:19, 55:22 ready [3] - 5:15, 5:18, 21:18 real [14] - 34:6, 52:6, 54:7, 55:13, 55:15, 69:1, 75:18, 76:10, 80:20, 100:11, 108:22, 110:9, 110:19, 111:12 reality [3] - 47:12, 59:22, 114:6 realize [2] - 34:11, 113:10 really [70] - 7:6, 7:14, 11:20, 13:3, 14:5, 14:14, 14:21, 15:2, 26:15, 33:20, 34:1,</p>	<p>34:5, 34:12, 34:14, 36:7, 38:16, 49:10, 50:11, 50:20, 56:16, 63:9, 65:6, 66:1, 67:21, 68:13, 70:5, 70:15, 77:9, 77:14, 77:20, 78:22, 80:5, 88:1, 88:22, 90:2, 90:6, 90:7, 90:10, 90:16, 91:5, 91:9, 92:6, 92:12, 98:13, 98:14, 99:14, 103:7, 103:14, 103:20, 103:23, 104:21, 107:6, 109:4, 109:10, 114:23, 115:9, 115:12, 115:14, 119:11, 119:21, 126:5, 127:1, 127:15, 127:20, 129:5, 130:24, 133:12, 133:14, 137:18 reason [11] - 13:7, 22:16, 37:10, 37:12, 87:5, 88:16, 100:20, 101:1, 101:21, 119:9, 132:20 reasonable [9] - 25:21, 52:18, 64:16, 66:15, 66:18, 66:19, 67:16, 73:21, 89:9 reasonable [1] - 103:13 reasonably [1] - 66:24 reasoned [2] - 40:13 reasons [7] - 13:8, 33:23, 42:19, 80:16, 100:13, 117:1, 122:5 receivable [2] - 93:20, 94:6 receive [1] - 57:11 recent [2] - 87:15, 130:16 recess [2] - 63:24, 139:18 Recess [1] - 64:1 reckless [2] - 67:17, 68:1 recognize [6] - 34:5, 42:25, 49:7, 80:14, 126:14, 132:5 reconsideration [3] - 84:21, 85:1, 85:3 record [18] - 23:21, 26:24, 63:25, 71:2, 75:22, 85:13, 88:25, 101:19, 104:9, 108:15, 108:16, 112:11, 115:8,</p>	<p>126:21, 133:5, 134:8, 134:25, 136:20 recording [1] - 140:4 records [3] - 75:18, 76:4, 110:13 recourse [1] - 55:1 recover [3] - 44:17, 66:8, 68:4 recoveries [1] - 12:24 recovery [1] - 65:2 Recovery [1] - 94:5 red [2] - 80:24, 130:9 reduce [1] - 116:18 reduced [1] - 116:20 reducing [2] - 132:13, 132:21 redundant [1] - 119:9 refer [4] - 46:12, 68:21, 69:5, 133:2 reference [2] - 45:3, 117:21 referencing [1] - 106:5 referred [4] - 32:10, 85:11, 93:21, 98:14 referring [2] - 46:13, 93:20 refers [3] - 45:1, 69:6, 69:11 refine [1] - 34:1 reflected [1] - 135:7 reflection [2] - 86:2, 135:23 refuse [1] - 25:15 regard [10] - 47:16, 87:25, 88:7, 90:4, 120:12, 120:13, 123:4, 123:5, 123:6, 127:18 regarding [5] - 54:18, 61:11, 75:5, 84:24, 85:3 Registry [1] - 83:1 regulator [1] - 72:5 regulatory [1] - 45:24 reimbursed [2] - 59:10, 59:14 reimbursement [1] - 59:25 relate [3] - 87:11, 97:11, 120:17 related [1] - 39:17 relates [3] - 80:20, 96:23, 97:24 relating [1] - 110:15 relational [1] - 121:25 relative [3] - 120:1, 122:20, 122:23 relatively [1] - 26:21 release [6] - 44:10,</p>
---	--	---	---

70:18, 70:23, 71:4, 71:6, 71:9, 71:21, 71:25, 72:16, 72:22, 73:7, 73:19, 73:23, 76:15, 78:6, 78:24, 79:11, 79:13, 79:14, 79:15, 79:19, 81:20, 82:10, 83:15, 86:13, 86:22, 87:6, 87:17, 87:20, 87:23, 87:25, 88:3, 88:4, 88:18, 89:2, 89:4, 92:3, 92:21, 93:2, 93:7, 93:10, 93:14, 93:16, 96:2, 96:3, 96:8, 97:13, 106:2, 106:3, 106:17, 107:11, 109:8, 109:18, 109:20, 109:24, 115:3, 115:20, 118:14, 119:4, 119:17, 119:18, 119:21, 119:23, 124:10, 126:19	reported [3] - 42:5, 87:21, 119:5 REPORTER [1] - 140:1 Reporting [26] - 7:7, 7:14, 12:24, 15:20, 16:9, 16:10, 16:23, 17:23, 20:16, 20:21, 25:23, 28:23, 38:9, 40:15, 53:16, 57:14, 76:16, 82:12, 99:23, 103:20, 118:16, 119:8, 121:22, 124:8, 124:23, 126:10 reporting [9] - 51:16, 51:17, 55:3, 69:13, 71:24, 80:24, 82:12, 125:11, 125:17	reports [54] - 13:23, 15:21, 19:6, 19:9, 20:24, 21:11, 22:5, 25:21, 28:14, 28:19, 29:16, 30:1, 30:2, 30:8, 30:10, 31:20, 32:5, 34:13, 35:15, 35:16, 35:22, 36:11, 36:13, 36:15, 36:18, 38:9, 38:18, 50:22, 53:15, 53:17, 54:9, 54:14, 66:23, 69:14, 70:12, 72:7, 78:8, 82:19, 83:11, 83:12, 83:13, 83:14, 84:17, 86:9, 86:16, 86:21, 87:2, 87:14, 117:3	123:25, 125:19, 130:1 represent [5] - 5:12, 5:14, 41:25, 42:11, 64:10 representations [2] - 28:16, 76:24 representative [2] - 29:6, 62:19 representatives [10] - 18:9, 19:4, 20:23, 21:10, 21:21, 22:12, 22:25, 28:15, 33:21, 40:4 represented [2] - 27:22, 63:3 representing [2] - 28:6, 62:7 represents [1] - 48:17 reputation [3] - 15:5, 20:19, 39:5 request [7] - 37:20, 38:20, 57:3, 93:6, 114:6, 119:3, 129:17 requested [3] - 37:1, 56:20, 62:21 require [5] - 43:19, 44:16, 103:15, 104:12, 136:6 required [5] - 38:9, 54:16, 90:23, 103:12, 126:25 requirement [1] - 124:8 requirements [7] - 22:14, 22:24, 46:14, 92:22, 96:3, 118:15, 125:5 requires [1] - 107:9 requisite [1] - 20:24 residences [1] - 75:7 residing [1] - 43:13 residual [1] - 59:14 resolution [2] - 40:16, 86:6 resolve [2] - 88:10, 118:2 resolved [3] - 8:21, 10:24, 14:15 resolves [1] - 126:5 resources [2] - 91:19, 125:9 respect [20] - 18:16, 24:5, 28:14, 36:18, 39:21, 39:24, 39:25, 43:14, 46:15, 57:19, 62:3, 82:15, 82:22, 96:7, 118:11, 119:6, 119:10, 125:4, 130:8, 131:25	respected [3] - 9:3, 44:4, 50:10 respects [1] - 57:8 respond [2] - 46:8, 72:14 response [7] - 15:24, 45:24, 48:10, 71:25, 83:2, 83:8, 135:10 responses [1] - 28:7 responsibilities [1] - 92:4 responsibility [1] - 71:13 rest [2] - 62:9, 132:5 restatement [1] - 24:14 restrict [1] - 117:1 restricted [1] - 45:7 result [9] - 15:24, 23:18, 29:13, 37:16, 38:18, 44:13, 54:21, 54:24, 55:16 results [9] - 79:5, 79:8, 107:17, 108:2, 109:6, 110:9, 110:19, 111:12, 122:19 retain [1] - 34:17 retool [1] - 128:24 retractors [1] - 102:4 retreat [1] - 28:4 returned [1] - 23:17 reveal [1] - 28:7 revenue [1] - 54:4 reversion [1] - 58:25 revert [2] - 46:21, 59:24 review [2] - 130:10, 137:21 reviewed [3] - 110:18, 135:5, 136:3 reviewing [1] - 122:14 revision [1] - 72:4 Richards [3] - 50:9, 50:19, 56:6 Richards' [1] - 55:18 RICHMOND [1] - 1:2 Richmond [2] - 1:16, 4:8 Rico [1] - 43:14 rightfully [1] - 22:14 Rights [1] - 67:7 rights [6] - 29:11, 67:8, 93:2, 125:9, 125:13, 128:11 rigorous [2] - 61:19, 132:16 rise [3] - 5:3, 63:23, 139:17 risk [2] - 25:25, 77:18	RISK [1] - 1:8 risks [10] - 22:15, 40:3, 40:19, 41:7, 41:8, 42:22, 42:23, 43:7, 72:10 Road [1] - 3:12 Robertson [1] - 33:4 robust [1] - 114:22 roles [1] - 125:16 Ron [6] - 6:12, 6:18, 89:18, 94:24, 120:18, 121:3 RONALD [1] - 4:19 Ronald [1] - 5:14 room [2] - 27:14, 52:24 ROTKIS [1] - 3:17 Rotkis [1] - 6:5 rough [1] - 37:14 roughly [1] - 34:17 rules [1] - 132:2 run [3] - 41:6, 79:3, 104:20 runs [1] - 68:24	search [33] - 20:6, 20:8, 30:10, 30:11, 32:7, 32:8, 38:4, 38:5, 38:12, 38:13, 45:4, 45:5, 46:14, 48:11, 49:2, 76:13, 79:3, 79:5, 79:8, 96:2, 107:16, 108:1, 108:6, 108:22, 109:6, 110:9, 110:19, 111:12, 121:8, 122:11, 122:19 search-and-locate [4] - 20:6, 20:8, 38:5, 45:5 search-like [1] - 49:2 searches [1] - 30:10 seated [2] - 5:7, 64:6 second [6] - 36:24, 44:25, 48:20, 49:17, 116:3, 129:7 secret [1] - 58:25 section [1] - 106:17 securant [1] - 83:19 Securant [1] - 15:20 secured [1] - 64:25 Security [3] - 19:19, 20:10, 32:14 security [1] - 82:15 see [41] - 8:25, 10:10, 12:10, 18:12, 27:10, 28:1, 30:15, 30:16, 30:20, 33:2, 33:6, 33:15, 34:16, 47:21, 48:20, 49:8, 50:18, 56:9, 57:15, 64:23, 85:1, 103:1, 107:2, 107:5, 107:23, 108:8, 109:16, 110:11, 112:15, 113:23, 115:12, 117:20, 122:16, 125:11, 126:12, 130:9, 135:17, 136:23, 137:19, 138:4, 138:15 seeing [4] - 50:5, 56:17, 91:16, 138:17 seek [2] - 8:25, 65:23 seeking [1] - 36:17 seem [1] - 68:21 sees [1] - 107:8 Seismic [2] - 82:14, 83:18 sell [6] - 13:17, 29:24, 30:2, 54:8, 55:7, 77:19 sells [1] - 108:12 send [4] - 10:18,
---	---	---	--	--	---	---

78:17, 78:20, 102:1 sending [1] - 58:17 sense [9] - 24:6, 35:23, 53:4, 103:17, 104:19, 114:4, 116:6, 132:24, 133:6 sensitive [2] - 101:3 sensitivity [2] - 14:23, 48:22 sentence [1] - 68:20 separate [7] - 16:4, 16:15, 16:16, 17:2, 31:20, 57:7, 57:8 separately [3] - 12:21, 57:7, 63:4 September [1] - 24:18 sequentially [1] - 76:3 series [3] - 82:6, 123:3, 125:5 serious [1] - 65:1 serve [1] - 125:15 serves [1] - 75:15 service [5] - 20:7, 43:4, 76:23, 96:2, 101:18 services [1] - 118:8 session [4] - 5:6, 64:5, 107:13, 110:4 sessions [1] - 35:6 set [12] - 26:19, 29:5, 41:15, 47:12, 64:12, 71:20, 93:21, 103:2, 104:23, 108:20, 115:25, 138:14 sets [1] - 138:13 settled [6] - 15:25, 17:14, 21:2, 21:4, 41:14, 132:15 settlement [7:1] - 7:13, 7:25, 8:5, 8:7, 8:13, 9:8, 9:12, 10:12, 13:5, 16:13, 17:17, 18:17, 18:19, 23:18, 23:19, 26:17, 31:20, 32:23, 33:7, 36:14, 37:24, 38:7, 38:11, 42:4, 42:14, 43:23, 44:1, 44:18, 45:18, 45:22, 46:4, 50:18, 50:19, 52:20, 54:14, 56:1, 56:19, 57:13, 61:21, 61:22, 63:9, 63:12, 64:15, 64:22, 77:9, 78:7, 82:25, 83:2, 83:3, 83:6, 85:24, 89:8, 93:10, 93:12, 101:6, 102:4, 103:14, 103:16, 123:3, 123:14, 129:15, 131:14,	132:4, 133:8, 133:11, 133:19, 134:12, 135:11, 136:5, 136:7 settlements [3] - 15:8, 43:8, 58:23 seven [16] - 20:17, 31:15, 39:3, 39:22, 45:6, 45:16, 46:23, 47:1, 49:14, 69:17, 71:5, 72:21, 96:15, 100:18, 129:19 seven-characteristic [2] - 71:5, 72:21 seven-factor [1] - 69:17 seven-year [2] - 45:16, 49:14 seventh [1] - 113:16 several [1] - 34:16 shaded [1] - 111:14 shaded-out [1] - 111:14 share [2] - 27:18, 29:18 shared [1] - 10:13 sheet [1] - 109:8 shift [4] - 77:18, 90:10, 91:8, 115:6 shifting [1] - 98:19 ship [1] - 127:21 shortly [1] - 17:24 shots [2] - 102:10, 124:18 show [9] - 30:15, 66:13, 97:12, 101:22, 108:18, 120:17, 121:6, 122:20, 129:17 showed [1] - 76:13 showing [3] - 66:16, 119:16, 119:22 sic [3] - 32:1, 42:10, 95:18 sic.) [1] - 31:25 side [12] - 7:1, 7:2, 7:16, 8:24, 12:6, 27:15, 28:5, 48:3, 48:19, 49:15, 113:4, 133:22 sides [4] - 10:12, 24:10, 45:12, 48:14 sign [5] - 25:16, 79:1, 79:2, 98:1, 103:4 signed [1] - 77:2 significance [2] - 90:1, 100:12 significant [4] - 15:3, 90:6, 91:8, 132:18	significantly [2] - 26:1, 133:15 signoff [1] - 8:15 silent [1] - 26:8 similar [1] - 58:22 simple [4] - 20:8, 32:6, 51:8, 69:1 simply [15] - 14:11, 20:9, 20:14, 27:6, 27:19, 28:1, 30:3, 30:25, 31:17, 42:13, 50:16, 61:24, 68:3, 75:12, 94:25, 95:18 single [3] - 16:3, 87:11, 108:19 singular [2] - 42:3, 125:17 sit [2] - 26:19, 135:3 site [1] - 127:13 sitting [2] - 11:15, 91:12 situation [2] - 54:18, 55:14 six [2] - 39:22, 39:25 sixth [1] - 113:15 skip [9] - 20:9, 92:24, 96:23, 97:12, 105:11, 110:6, 115:19, 116:19, 116:22 skip-and-locate [7] - 20:9, 96:23, 97:12, 105:11, 115:19, 116:19, 116:22 skip-and-locating [1] - 92:24 slicing [1] - 79:20 slide [5] - 28:11, 105:3, 108:7, 115:14, 122:16 slides [4] - 104:23, 108:20, 110:8, 111:11 slightly [1] - 98:7 small [3] - 60:11, 90:18, 134:2 Smith [4] - 81:16, 81:17, 81:20, 81:22 smoothly [1] - 137:20 snapshot [1] - 105:4 Social [3] - 19:19, 20:10, 32:14 social [1] - 84:12 software [1] - 129:3 sold [15] - 13:22, 17:21, 19:17, 28:14, 36:10, 36:11, 36:19, 54:21, 78:5, 78:8, 78:23, 103:19, 110:14, 110:15	9:4, 18:5, 49:16, 61:13, 63:5, 102:5, 130:20, 130:22, 131:5, 132:16, 132:17, 133:2, 133:15, 135:17, 137:21, 138:22 Spencer's [2] - 9:1, 132:13 spend [2] - 46:20, 91:23 spent [5] - 34:21, 88:21, 96:14, 114:17 split [1] - 16:3 spouse [2] - 51:18 srotkis@clalegal.com [1] - 3:23 St [1] - 50:9 stage [1] - 25:2 stand [1] - 130:24 standard [6] - 54:9, 54:15, 54:16, 65:22, 67:4, 87:16 standards [1] - 46:2 standing [5] - 20:18, 20:24, 21:10, 39:5, 74:17 standpoint [10] - 8:19, 18:23, 24:20, 25:4, 25:13, 30:5, 30:6, 53:22, 63:4, 113:1 stands [2] - 63:24, 139:18 start [5] - 8:10, 96:11, 115:17, 129:5, 129:14 started [3] - 52:13, 94:2, 133:22 State [1] - 57:14 state [2] - 66:25, 117:10 statement [8] - 13:4, 38:8, 83:14, 85:16, 85:20, 119:10, 120:12, 121:21 STATES [1] - 1:1 States [4] - 5:4, 43:13, 64:3, 140:6 statute [24] - 29:5, 43:5, 68:10, 68:24, 69:4, 69:10, 69:11, 69:21, 70:1, 70:2, 70:5, 70:7, 70:20, 71:12, 71:20, 73:14, 73:15, 73:22, 87:4, 88:19, 112:10, 117:21 statutes [1] - 117:24 statutory [5] - 25:7, 42:24, 43:2, 44:20,
--	---	---	--

66:8	61:14, 119:10, 120:12, 125:2	switch [2] - 90:24, 91:1	123:9, 123:17, 124:3, 124:11, 124:14, 124:17, 124:21, 125:8, 126:7, 126:11, 127:7, 127:14, 128:3, 129:12, 129:23, 130:2, 131:8, 131:14, 131:17, 131:22, 132:22, 133:6, 133:21, 134:1, 134:5, 134:11, 134:14, 135:1, 135:25, 136:13, 137:2, 137:12, 137:15, 139:2, 139:12, 139:17
stay [1] - 108:4	submitted [1] - 10:5	system [12] - 91:2, 97:22, 99:6, 99:7, 108:1, 111:22, 120:25, 121:4, 125:23, 126:14, 129:4, 138:25	T
staying [1] - 9:19	subparts [1] - 69:23	systems [4] - 84:4, 126:15, 128:23, 129:3	
steered [1] - 77:5	subsequent [1] - 33:15		
step [7] - 13:10, 28:4, 37:19, 90:4, 101:2, 113:14, 113:16	substantial [12] - 53:19, 55:24, 64:25, 88:15, 89:6, 89:22, 90:7, 91:4, 99:4, 101:4, 105:2, 131:20		
stepping [1] - 27:17	substantive [2] - 7:13, 40:8		
steps [2] - 122:16, 135:12	subtle [1] - 34:5		
still [12] - 11:4, 51:24, 61:19, 97:16, 101:16, 102:20, 105:13, 117:17, 124:24, 131:10, 132:2, 132:9	success [1] - 75:4		
stipulated [2] - 102:23, 103:5	successful [2] - 7:15, 29:6		
stop [2] - 120:5, 133:4	successfully [2] - 34:23, 75:4		
stories [1] - 75:4	such-and-such [2] - 120:19, 121:3		
stranger [1] - 56:8	suffered [2] - 38:17, 44:13		
strategic [1] - 65:25	suggestion [1] - 10:22		
strategy [1] - 24:10	suit [1] - 21:12		
Street [5] - 2:13, 2:21, 3:5, 4:14, 4:22	Suite [4] - 2:6, 2:22, 3:13, 3:20		
strike [4] - 35:16, 53:5, 135:9, 138:13	suite [1] - 118:7		
strikes [3] - 53:6, 134:1, 135:10	sum [1] - 59:13		
strong [1] - 40:1	summarize [1] - 61:17		
strongly [1] - 21:9	Summary [1] - 30:17		
struck [1] - 55:22	summary [4] - 85:11, 85:22, 88:13, 115:9		
structural [2] - 10:23, 11:14	sunset [3] - 46:12, 47:5, 129:18		
structured [2] - 90:16, 125:15	superceded [1] - 85:16		
structuring [1] - 23:24	superiority [1] - 63:10		
stuff [1] - 86:19	superstar [1] - 5:24		
sub [1] - 78:22	supply [1] - 79:4		
sub-screening [1] - 78:22	support [3] - 9:5, 27:1, 72:15		
subject [35] - 15:19, 16:10, 16:22, 17:22, 19:4, 19:5, 19:8, 20:15, 22:4, 24:24, 28:23, 28:24, 29:10, 29:17, 29:19, 36:10, 36:21, 37:5, 37:7, 54:14, 54:20, 55:5, 67:10, 67:11, 67:13, 88:15, 92:4, 92:21, 99:24, 100:2, 103:19, 116:1, 118:15, 125:20, 132:7	supported [2] - 73:15, 73:16		
subjects [1] - 36:20	supposed [1] - 7:18		
submit [5] - 52:11,	Supreme [4] - 66:12, 67:3, 67:15, 69:23		
	surprising [1] - 132:4		
	survive [1] - 22:23		
	survived [1] - 41:13		
	SUSAN [1] - 3:17		
	suspect [1] - 73:5		
	suspension [1] - 98:12		

timing [5] - 126:24, 129:21, 132:25, 133:7, 133:15 Title [1] - 2:12 today [11] - 11:15, 13:8, 15:16, 28:5, 28:18, 89:20, 89:23, 98:21, 105:5, 107:3, 109:5 together [10] - 12:21, 36:25, 90:5, 91:6, 100:8, 100:21, 102:14, 118:4, 118:7, 124:25 tomorrow [2] - 9:11, 9:15 Tony [1] - 17:19 took [1] - 111:23 tool [3] - 73:25, 87:8, 87:12 top [3] - 7:6, 48:15, 116:16 totality [1] - 27:22 touching [1] - 36:17 tough [1] - 7:8 towards [2] - 28:4, 99:9 Towers [1] - 34:21 track [1] - 136:23 Trade [5] - 34:20, 68:10, 82:9, 82:11, 82:13 trade [1] - 51:19 traditional [1] - 120:6 trained [1] - 128:18 training [3] - 123:4, 123:10, 123:16 transaction [1] - 74:14 transactions [2] - 70:10, 71:14 transcribed [1] - 140:4 transcript [2] - 140:11, 140:12 transferred [1] - 18:4 transform [1] - 73:7 travel [1] - 71:16 treat [3] - 28:22, 68:3, 78:7 treated [2] - 68:2, 126:2 treating [1] - 89:3 treatment [1] - 66:1 tree [1] - 9:12 tremendous [2] - 55:23, 101:22 trial [2] - 41:14, 41:15 tried [4] - 7:23, 8:2, 87:19, 91:5 tries [1] - 100:1 TROUTMAN [1] - 4:4	Troutman [2] - 4:5, 6:11 truce [1] - 49:11 true [2] - 138:3, 140:11 truly [1] - 7:10 trust [1] - 59:6 truth [1] - 41:23 try [8] - 8:21, 52:3, 59:22, 66:3, 76:4, 113:14, 113:24 trying [14] - 30:3, 34:9, 35:23, 79:23, 86:25, 87:1, 89:20, 94:21, 100:7, 112:19, 113:10, 113:12, 113:16, 119:12 turn [3] - 6:18, 47:13, 63:19 turning [1] - 73:23 turns [2] - 54:19, 77:2 twice [4] - 16:15, 26:13, 34:4, 49:3 Twins [1] - 34:21 two [19] - 15:7, 16:4, 16:15, 16:17, 16:19, 18:10, 18:21, 27:11, 31:19, 36:7, 36:9, 38:15, 44:9, 57:6, 57:19, 59:9, 92:19, 100:13, 124:19 twofold [1] - 105:25 type [7] - 11:9, 32:18, 79:21, 81:1, 96:12, 96:16, 113:3 types [6] - 21:24, 31:20, 94:17, 96:16, 96:21, 96:25 typicality [8] - 22:13, 61:11, 61:16, 62:3, 62:11, 62:13, 63:3, 63:13 typically [2] - 28:24, 37:11	69:12, 69:19, 69:24, 76:20, 83:4, 88:16, 94:25, 99:6, 99:24, 100:4, 102:6, 107:25, 108:6, 110:13, 117:18, 119:8, 123:3, 125:5, 127:9, 137:7, 140:14 underneath [1] - 30:19 understandable [1] - 11:6 understandably [1] - 47:7 undertaken [1] - 24:12 undertaking [1] - 90:19 undertow [1] - 137:1 underwriting [1] - 125:21 unfair [1] - 19:14 unfortunately [2] - 108:24, 109:3 unintended [1] - 106:12 unique [1] - 92:18 United [4] - 5:4, 43:13, 64:3, 140:6 UNITED [1] - 1:1 unknowing [1] - 29:3 UNKNOWN [6] - 49:18, 53:24, 99:22, 111:15, 136:25, 137:9 unless [3] - 63:19, 67:8, 89:10 unlikely [1] - 62:15 unlitigatable [1] - 42:10 unpublished [1] - 62:12 unquestionably [1] - 16:22 unreasonable [1] - 62:9 unresolved [1] - 8:20 unusual [3] - 18:17, 18:19 unwitting [1] - 29:2 unwittingly [1] - 83:6 up [55] - 6:3, 13:21, 14:13, 14:14, 15:7, 26:19, 27:16, 28:2, 29:5, 30:15, 38:7, 42:5, 44:21, 45:13, 49:9, 54:10, 54:23, 56:4, 56:15, 59:21, 61:11, 71:20, 74:11, 75:20, 77:2, 78:2, 79:1, 80:13, 91:13,	97:12, 103:2, 106:20, 109:23, 111:15, 111:24, 113:13, 116:12, 116:15, 116:21, 119:16, 119:22, 120:8, 120:17, 120:22, 121:2, 121:15, 122:5, 122:12, 122:17, 122:19, 127:13, 127:25 useful [4] - 72:23, 73:2, 73:3, 75:8 user [23] - 76:22, 76:25, 97:22, 97:25, 101:10, 128:18 uses [14] - 16:21, 36:14, 70:12, 71:5, 72:21, 92:1, 92:2, 92:8, 92:9, 92:18, 93:16, 94:24, 95:19, 98:16 UVA [2] - 5:22, 50:10	vending [1] - 99:8 verbiage [1] - 47:21 verify [1] - 74:19 versa [1] - 100:2 version [1] - 96:13 versions [1] - 48:9 versus [3] - 5:9, 31:7, 66:24 vet [1] - 98:15 vetted [1] - 136:3 via [1] - 105:10 viable [2] - 126:15, 126:18 vice [1] - 100:2 victim [2] - 21:23, 62:22 victims [3] - 29:2, 29:3 victory [1] - 62:4 view [9] - 15:13, 15:16, 61:12, 61:17, 102:22, 103:4, 112:24, 114:4, 132:16 viewed [2] - 33:22, 33:24 violate [1] - 67:12 violated [1] - 66:7 violating [1] - 67:7 Violation [6] - 65:24, 65:25, 66:2, 67:1, 67:17, 68:6 violator [1] - 67:17 VIRGINIA [1] - 1:2 Virginia [10] - 1:16, 2:7, 3:6, 3:14, 3:21, 4:8, 18:1, 140:7, 140:15, 140:22 viscerally [1] - 49:5 visit [2] - 103:3, 127:13 voice [2] - 9:2, 132:6 volume [2] - 50:21, 79:18 voluntarily [3] - 18:25, 19:2, 57:9 vote [1] - 83:9 vs [1] - 1:7	V	valid [1] - 70:19 valuable [6] - 36:14, 43:4, 80:20, 80:21, 87:8, 87:11 value [18] - 20:1, 28:18, 30:21, 31:9, 50:18, 50:19, 52:4, 52:5, 52:6, 53:12, 64:25, 72:6, 72:8, 75:21, 76:5, 76:10, 86:2, 97:20 variations [1] - 48:11 varies [1] - 79:22 variety [2] - 30:10, 84:12 various [5] - 30:8, 48:11, 73:17, 76:3, 92:9 vehemently [1] - 49:5 vehicle [2] - 18:21, 73:1	W	wages [1] - 54:23 wait [2] - 85:21, 127:25 waiver [1] - 98:6 Walgreen's [2] - 113:22, 113:23 walk [3] - 8:3, 14:25, 91:17 wants [6] - 30:25, 72:6, 103:24, 133:3,
--	---	---	--	--	----------	---	----------	--

136:2, 138:19
warrant [1] - 41:17
waste [1] - 76:8
watercraft [1] - 19:22
watershed [1] - 25:24
ways [1] - 113:13
we're-both-present [1] - 12:7
web [2] - 76:24, 125:10
website [3] - 30:13, 43:21, 105:10
weighed [1] - 49:16
weight [2] - 40:11, 86:1
well-respected [2] - 9:3, 50:10
West [1] - 3:5
whereas [1] - 54:10
White [1] - 90:21
White-Hernandez [1] - 90:21
whittling [1] - 8:20
whole [8] - 6:24, 14:2, 14:7, 65:18, 70:6, 76:17, 79:19, 91:1
wholly [1] - 87:3
wide [1] - 86:6
wife [2] - 34:23, 74:6
willful [3] - 44:23, 66:7, 68:5
willfully [1] - 66:6
willfulness [11] - 18:23, 25:6, 25:8, 26:1, 44:15, 44:16, 44:17, 62:8, 67:13, 87:16, 87:18
Williams [17] - 15:17, 15:18, 17:6, 17:10, 17:11, 17:16, 18:3, 18:4, 18:11, 18:14, 23:16, 23:19, 33:14, 41:11, 62:15, 125:20
williams [1] - 18:2
willing [3] - 26:5, 29:25, 31:1
Wilson [1] - 18:1
win [1] - 85:18
wish [1] - 138:16
witness [1] - 73:4
witnesses [5] - 56:11, 56:12, 75:3, 75:12
won [1] - 49:16
wondering [1] - 88:22
WOOD [1] - 3:3
word [4] - 105:14, 105:18, 105:20, 130:21
words [2] - 72:24, 86:23

works [2] - 81:18, 113:22
world [1] - 132:5
World [1] - 34:20
worried [1] - 105:22
worth [4] - 15:6, 52:2, 72:7, 112:1
worthiness [1] - 39:8
worthy [1] - 44:10
wrap [1] - 61:11
writing [2] - 72:3, 91:12
written [2] - 88:20, 134:2
wrote [1] - 55:21
Wulff [4] - 34:18, 34:25, 35:4, 35:6

Y

year [10] - 15:17, 34:17, 45:16, 49:14, 50:24, 51:7, 80:24, 127:24, 129:6, 129:8
years [21] - 13:22, 18:20, 30:22, 31:9, 33:7, 34:22, 39:22, 39:25, 46:23, 47:1, 47:6, 47:7, 53:14, 57:18, 73:17, 82:25, 90:9, 100:18, 120:5, 129:19

York [2] - 27:12, 34:22

Z

zero [1] - 26:4